

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
) Chapter 11
PG&E CORPORATION AND PACIFIC)
GAS AND ELECTRIC COMPANY) San Francisco, California
) Thursday, February 20, 2020
Debtor.) 1:30 PM
)
SECURITIES LEAD PLAINTIFF'S
MOTION TO APPLY BANKRUPTCY
RULE 7023 TO CLASS PROOF OF
CLAIM [5042]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

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Proceedings recorded by electronic sound recording;
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1 SAN FRANCISCO, CALIFORNIA, THURSDAY, FEBRUARY 20, 2020, 1:30 PM

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3 (Call to order of the Court.)

4 THE COURT: Good afternoon.

5 IN UNISON: Good afternoon.

6 THE COURT: I didn't expect to see so many of you
7 here.

8 THE CLERK: Matter of PG&E Corporation.

9 THE COURT: Appearances? Mr. Karotkin, I didn't
10 expect you here, but here you are.

11 MR. KAROTKIN: Can't stay away, sir.

12 THE COURT: All right. Well, let's -- are you going
13 to make the presentation?

14 MR. KAROTKIN: Yes, sir.

15 THE COURT: Okay. Well, then I'll get the appearances
16 from the others when they hear. So you've got my questions.

17 MR. KAROTKIN: I do.

18 THE COURT: Why don't we start with that?

19 MR. KAROTKIN: I'd like to digress, if I could.

20 THE COURT: Okay.

21 MR. KAROTKIN: If you can indulge me. I'll address
22 your questions --

23 THE COURT: No --

24 MR. KAROTKIN: -- in the mediation order, but --

25 THE COURT: You can digress.

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1 MR. KAROTKIN: If you could indulge me, I think that
2 it's important, Your Honor, to put this matter into context and
3 to understand why we're here today in dealing with this issue,
4 at this critical stage of these cases. I may tread over some
5 ground that was tread the other day, but I think, again, it's
6 important for the purpose of today's hearing as to what's
7 really motivating the plaintiffs and what's in the best
8 interest of this successful and timely --

9 THE COURT: Well, what's motivating me, in terms of
10 what's the right thing to do for this case, so --

11 MR. KAROTKIN: Well, exactly. I think --

12 THE COURT: Okay.

13 MR. KAROTKIN: Again, it's important that -- I think
14 it's important to go back to see where we are and what's
15 happened.

16 THE COURT: All right.

17 MR. KAROTKIN: And as I'm sure you'll recall, Your
18 Honor, in connection with the establishment of the bar date,
19 back last summer, there were extensive hearings before the
20 Court, multiple hearings, multiple pleadings, concerns raised
21 about proper notice and a lot of the input, a lot of the input
22 from various parties. And not only, Your Honor, the fire
23 victims, who obviously were deeply involved, but a lot of
24 parties as to what the appropriate notice was. And as, again,
25 you know, Your Honor, as a result of those efforts, you

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1 approved a bar date order, a bar date notice that was the most
2 widespread and the most robust bar date notices -- noticing
3 program, perhaps, Your Honor, in the history of a Chapter 11
4 case. And again, not just from the perspective of the fire
5 claimants, but from the perspective of all potential claimants
6 in this case.

7 And I think, again, it's important to note, Your
8 Honor, going back to those hearings before Your Honor, that
9 were noticed to everyone, including the plaintiffs, who were
10 seeking class -- seeking to file the class claim, where were
11 they when that process was ongoing? They were conspicuously
12 absent, despite having notice of it. They put in no pleadings.
13 They put in no objection. Not one word, Your Honor. Not one
14 word. Not one pleading as to due process, as to whether that
15 notice that you approved was appropriate. Not one complaint
16 about the matters that were raised the last couple of weeks.
17 Not one thing --

18 THE COURT: You're a little loud.

19 MR. KAROTKIN: Okay, despite the fact that they were
20 actively involved in these cases. So where were they back
21 then, Your Honor? And why didn't they raise those issues? And
22 I know you don't want to hear this, but I think it's important
23 to hear this.

24 THE COURT: I'll hear it.

25 MR. KAROTKIN: The answer is quite obvious, because

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1 raising those concerns at that time, as to notice and whether
2 the notice should have been modified to address the concerns
3 they're now raising, would have completely eliminated any
4 chance for there to be a class claim. And what would that have
5 done? Eliminated any chance for the plaintiff lawyers to get a
6 fee.

7 And that's what this is all about. And let's be
8 honest about what it's all about. If they were really
9 concerned, Your Honor, about the rights of the so-called class,
10 the putative class members, and due process, where were they
11 six months ago? Where were they six months ago?

12 THE COURT: No, I -- that's a fair question, but the
13 question is, therefore, what do I do about it?

14 MR. KAROTKIN: Okay. I'm going to tell you what we
15 should do about it.

16 THE COURT: Okay.

17 MR. KAROTKIN: Number one, I think you should
18 reconsider whether notice was appropriate. Because again, that
19 was the most robust notice ever given in any Chapter 11 case,
20 and more than sufficient to address any issues of due process.
21 And they --

22 THE COURT: So if I were to do --

23 MR. KAROTKIN: -- strategically --

24 THE COURT: If I were to do that, I would deny the
25 motion and deny the alternative of --

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1 MR. KAROTKIN: Exactly. And that's -- Your Honor,
2 that's what I think the right answer is.

3 THE COURT: But what would be the result for the
4 people that were denied notice?

5 MR. KAROTKIN: They were not -- the fact of the matter
6 is that they were not denied notice.

7 THE COURT: Well, how --

8 MR. KAROTKIN: There was more than adequate notice.

9 THE COURT: Where would their rights be vindicated
10 under the plan? What would happen to them?

11 MR. KAROTKIN: Just like in any other Chapter 11 case,
12 where constructive notice is appropriate, there was
13 constructive notice. There was constitutional notice. In
14 fact, it was better notice than -- as I said, than has ever
15 been given in a case.

16 THE COURT: Okay.

17 MR. KAROTKIN: But they remained silent and they
18 remained strategically silent. And then what did they do, Your
19 Honor? They waited until the very last day, the very last day
20 of the bar date to file their claim. Then they waited two
21 months to bring this motion before the Court. Again, very
22 strategic to advance their own economic interests. And
23 that's -- again, now why today, Your Honor, are they fighting
24 against a new bar date? Simple answer to that question and
25 it's the same answer. Because again, Your Honor, if you were

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1 to extend the bar date, they're out of the box on a fee. And
2 that's what this is all about. And I think it's important to
3 recognize that. Now, I'm more than happy to address your other
4 issues, but I think that --

5 THE COURT: Well, what you need to address is, you
6 know, why didn't the notice go and reach out to the -- through
7 the nominees. In other words, these are -- see, the reason why
8 I don't want to get into a lot of the -- what might have
9 happened, it's what should happen. And so what you're telling
10 me is, to go back to the last hearing, when I talked about Mr.
11 A and Mr. B, what you're saying is Mr. B didn't get actual
12 notice, but therefore, Mr. B's claim will be discharged.

13 MR. KAROTKIN: Your Honor, if construct --

14 THE COURT: Whereas, under the alternative, one of
15 the -- either of the alternatives today or the third one I've
16 just passed through, you haven't told me whether you -- whether
17 that's a feasible one. Then B is discharged, maybe -- maybe.

18 MR. KAROTKIN: And that's how Chapter 11 works, Your
19 Honor. Because that's how constructive notice works. And if
20 constructive notice is ever appropriate, then it was
21 appropriate here.

22 THE COURT: Is it appropriate when there is a
23 mechanism for giving actual notice?

24 MR. KAROTKIN: There was no requirement to give actual
25 notice in the context of these cases. And I think that's what

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1 escapes everybody. But let's address the issues you have
2 today. Number one, and I can go through those issues, but --

3 THE COURT: Well, yeah, I made them up. The other --
4 the plaintiff's didn't come up with them. They wanted me to
5 grant their motion and I did my research and read the briefs
6 and saw alternatives and threw out, in an expedited basis --
7 that's why I didn't want to change people's travel schedules or
8 do otherwise. I just wanted to move quickly on this. So yeah,
9 why not just do nothing, divide everything and let nature take
10 its course and pass through?

11 MR. KAROTKIN: Because there's a very simple answer to
12 that question. Number one, Your Honor, the securities claims
13 are subordinated.

14 THE COURT: Right. I know, but they're --

15 MR. KAROTKIN: Most of them are --

16 THE COURT: But they're in the money.

17 MR. KAROTKIN: Pardon me?

18 THE COURT: They're in the money.

19 MR. KAROTKIN: But they're treated the same as equity.

20 THE COURT: I know. Well --

21 MR. KAROTKIN: And they're to be treated the same as
22 equity under the plan.

23 THE COURT: No, I know that.

24 MR. KAROTKIN: And if you were to let them ride
25 through, they wouldn't be treated the same as equity and there

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1 would be disparate treatment. If they rode through, they would
2 be treated as --

3 THE COURT: Why is that? I don't -- guess I don't --

4 MR. KAROTKIN: -- dollar claims. They would be --
5 they would have to be paid in cash, if their claims were
6 sustained.

7 THE COURT: Well --

8 MR. KAROTKIN: And that's now how equity's being
9 treated.

10 THE COURT: Some of the securities claims.

11 MR. KAROTKIN: Most of them. Most of these are
12 equity-based.

13 THE COURT: Well, I under -- but see, I can't quantify
14 it. There are some bondholders and there are some
15 shareholders. The shareholders get to be shareholders. The
16 bondholders get to be subordinated something or other.

17 MR. KAROTKIN: Well, I don't know how you let the
18 shareholder claims ride through and how they would be treated
19 as unimpaired under the plan and be treated in the same way as
20 existing shareholders. It's impossible.

21 THE COURT: What would've happened --

22 MR. KAROTKIN: Existing shareholders are being
23 significantly diluted under the plan.

24 THE COURT: Well, no, I understand they're being
25 diluted. I understand. But what would've happened -- well,

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1 okay. You say that ride through is not an option.

2 MR. KAROTKIN: Ride through is absolutely not an
3 option.

4 THE COURT: Under the existing plan, there are --
5 well, what -- suppose I go with the alternative of a
6 deferred -- reopen a bar date. What happens to the plan? In
7 other words, what do you do with the plan? You've got, if I
8 read it correctly, the common stock of the parent is impaired,
9 and the bonds of the sub are unimpaired.

10 MR. KAROTKIN: Correct.

11 THE COURT: So there's potential for different -- at
12 least two different classifications anyway.

13 MR. KAROTKIN: And they currently are classified
14 separately and would be treated separately.

15 THE COURT: Right, right, but what --

16 MR. KAROTKIN: So if you were to open the bar date, I
17 think the concerns that you raise, well, what if the bar date
18 were after the disclosure statement was approved? How would we
19 address that?

20 THE COURT: I don't know.

21 MR. KAROTKIN: Again, I'll tell you. It's a very
22 simple answer. Number one, under the plan, the claims based on
23 the bonds, which are subordinated but not subordinated to the
24 level of equity, are unimpaired and paid in full. So there is
25 no issue as to voting. They do not vote.

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1 THE COURT: Right, there are -- they'd stay
2 unimpaired. That's right.

3 MR. KAROTKIN: So the disclosure statement issue is
4 irrelevant, and voting is irrelevant.

5 THE COURT: Slow down for a minute. I think you're
6 stating what I believe, too. The securities plaintiffs would
7 be subordinated and unimpaired. They'd --

8 MR. KAROTKIN: The debt securities.

9 THE COURT: Yes, the debt -- that's correct. The debt
10 securities, to the extent that they have a claim. Maybe they
11 have no claim.

12 MR. KAROTKIN: Correct.

13 THE COURT: But if Mr. B files a claim for X dollars
14 and isn't challenged, then he will get equity.

15 MR. KAROTKIN: Exactly.

16 THE COURT: In that amount.

17 MR. KAROTKIN: No, he will get cash.

18 THE COURT: Oh, okay, cash.

19 MR. KAROTKIN: He will get cash.

20 THE COURT: All right. So what's wrong with that
21 result?

22 MR. KAROTKIN: There's nothing wrong with that result.
23 And in fact, there's no disclosure issue there, either, because
24 they don't vote.

25 THE COURT: No, I --

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1 MR. KAROTKIN: And if you were to have a bar date,
2 that would be fine. No one's rights would be prejudiced.

3 THE COURT: Well, it's not fine. But it seems to me
4 that you're complaining about the plaintiff's lawyers and I
5 don't want to get into the plaintiff's lawyers. If I open a
6 bar date for debt bond -- debt bond purchasers to the extent
7 that they have allowed claims, they'd get paid.

8 MR. KAROTKIN: Correct.

9 THE COURT: And so they're unimpaired and --

10 MR. KAROTKIN: And there's no issue as to disclosure,
11 because they're not voting anyway.

12 THE COURT: No, I understand. And that's what
13 would've happened to that group of people if there had never
14 been an bankruptcy and they just participated and the district
15 court had allowed the matter to get to class, you know, the
16 whole process, right?

17 MR. KAROTKIN: That's correct.

18 THE COURT: Okay. But what happens to the stock
19 purchasers?

20 MR. KAROTKIN: Again, the stock purchasers, to the
21 extent they have valid claims, are to be treated at the same
22 level as equity holders.

23 THE COURT: Right.

24 MR. KAROTKIN: That's how it works. That's what the
25 statute says.

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1 THE COURT: Right, that's what I understood.

2 MR. KAROTKIN: Okay. Now as to -- again, now the
3 thrust of -- one of the -- one of your questions was, well,
4 when to disclosure and voting and how we would address that if
5 the bar date were after you approved the disclosure statement.
6 Again, easy answer for this -- for the debt securities claims.
7 They don't vote.

8 THE COURT: We'd passed that --

9 MR. KAROTKIN: And the same easy answer for equity, by
10 the way. Because it doesn't matter whether equity accepts or
11 rejects the plan for purposes of confirmation. It doesn't
12 matter.

13 THE COURT: Well, do -- but what do we do about the
14 disclosure requirements?

15 MR. KAROTKIN: The disclosure requirements, Your
16 Honor, those claims -- in fact, the only way we will know the
17 magnitude of those claims, the only way we will know the
18 magnitude of those claims, for purposes of a confirmation and
19 addressing feasibility -- not feasibility, but other issues
20 relevant to confirmation, is if those claims are actually
21 filed, so we can see what they are. Having a class proof of
22 claim will not give us any idea as to the magnitude of those
23 claims, either the debt claims or the shareholder claims. The
24 only people who know whether they suffered a loss are those
25 people --

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1 THE COURT: Who suffered the loss.

2 MR. KAROTKIN: Who suffered the loss.

3 THE COURT: All right, okay.

4 MR. KAROTKIN: The class claimants do not know it. So
5 again, Your Honor, if you are inclined to find that there was
6 not due process, the only way to satisfy that is to open up the
7 bar date. That's the only way to do it.

8 THE COURT: Okay, but --

9 MR. KAROTKIN: A class claim --

10 THE COURT: Mr. Karotkin --

11 MR. KAROTKIN: -- will not satisfy that.

12 THE COURT: You're going too fast. Come back to my
13 question. Let's assume I open up the bar date. You've
14 persuaded me and I've figured out myself that the people who
15 bought bonds, security -- debt instruments are unimpaired.
16 What about the people that bought equity? Are they impaired or
17 not?

18 MR. KAROTKIN: They are impaired.

19 THE COURT: Then what do I do about them for purposes
20 of complying with the disclosure rules.

21 MR. KAROTKIN: As I said, Your Honor, the disclosure
22 rules go to voting. That's what a --

23 THE COURT: Okay, but -- but the rule -- well, but
24 they --

25 MR. KAROTKIN: It doesn't -- again, a disclosure

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1 statement, unless I'm missing something here, is for voting on
2 a plan.

3 THE COURT: And aren't the equity going to vote on the
4 plan as it is?

5 MR. KAROTKIN: Whether they vote on the plan is
6 irrelevant, because it doesn't matter for purposes of
7 confirmation whether the class of equity accepts or rejects the
8 plan. It doesn't matter.

9 THE COURT: Then why -- why do we have an impaired
10 class that's getting disclosure under the disclosure statement
11 presently? In other words, if I take your advice and toss this
12 whole thing out, the equity class of the parent company will
13 get their disclosure, right?

14 MR. KAROTKIN: They will.

15 THE COURT: But we don't count their votes?

16 MR. KAROTKIN: It doesn't matter.

17 THE COURT: I know it doesn't matter.

18 MR. KAROTKIN: It doesn't matter. It has no impact on
19 anything, Your Honor.

20 THE COURT: Then why didn't you tell me that we didn't
21 need to disseminate a disclosure statement to that class of
22 equity? We just --

23 MR. KAROTKIN: You know, Your Honor, that's certainly
24 an option. That's certainly an option.

25 THE COURT: But we've already done it.

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1 MR. KAROTKIN: No, we haven't. We haven't sent out
2 the disclosure statement and we haven't sent out ballots yet.

3 THE COURT: Well, of course. But you've sent out the
4 notice of the hearing.

5 MR. KAROTKIN: Yes. And people have a right to be
6 heard and they can object to confirmation. But again --

7 THE COURT: I've been --

8 MR. KAROTKIN: If you're concerned about disclosure
9 for voting purposes, it's a red herring. It's not an issue.
10 What is the issue is how do we understand the magnitude of the
11 claims? And the only way to --

12 THE COURT: I think we're -- I'm sorry to interrupt
13 you. I think we're talking about two different things. I
14 fully appreciate the issue of, well, if I allow a class claim,
15 how do we quantify it versus if I allow an open deadline or a
16 fixed deadline to file claims, that will quantify it? And
17 therefore, there's a choice.

18 MR. KAROTKIN: And Your Honor --

19 THE COURT: But if you're telling me it doesn't matter
20 for voting purposes, then I have to ask the broader question.
21 Should there be a revisiting of whether there needs to be a
22 promulgation of a notice of a deadline for disclosure and --
23 excuse me, a deadline for voting under the notice procedure,
24 even for the existing equity? And you seem to be saying no, we
25 don't have to solicit the votes. And I might agree with you,

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1 but that's not the -- this is the first time we've had that
2 discussion.

3 MR. KAROTKIN: Again, but for purposes of today's
4 hearing --

5 THE COURT: Yes.

6 MR. KAROTKIN: -- it doesn't matter. That's what I'm
7 trying to tell you.

8 THE COURT: Okay.

9 MR. KAROTKIN: You know, they complain about
10 disclosure and participating in the disclosure statement
11 hearing. Again, it doesn't matter for purposes of voting on
12 the plan and confirmation. Whether that class of equity votes
13 yes or no is irrelevant to whether or not we can meet the
14 requirements under Section 1129. It's not a cramdown -- it is
15 a cramdown issue, but you're cramming down an equity,
16 effectively.

17 THE COURT: But I guess I -- I have to -- I think I
18 disagree with you because I haven't thought it through because
19 I didn't think this was an issue. Until this discussion, I've
20 been assuming that the equity class will vote, but I've also
21 been assuming that it's probably not a big issue because you've
22 probably got the votes.

23 MR. KAROTKIN: That's correct. And Your Honor --

24 THE COURT: That's different from saying they're not
25 going to be a vote.

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1 MR. KAROTKIN: But I'm trying to address your concerns
2 about disclosure, okay, and how it really is a red herring.
3 But look, even if we were to have a bar date in the timing
4 we're proposing, it would be finished by March 31st and there's
5 still forty-five days to vote.

6 THE COURT: Well, I know, but you have the anomaly of
7 having a disclosure process open up at the time that the
8 deadline to object to disclosure has closed. And that's a bit
9 of a problem. Look, I've got to be honest with you. Why the
10 hell did this even happen in the first place? And don't -- you
11 know, you can say we had this robust hearing on the bar date,
12 but why didn't the original notice include a procedure for
13 giving notice through the nominee?

14 MR. KAROTKIN: Because there's no requirement under
15 applicable law.

16 THE COURT: How about under applicable common sense,
17 because there was an existing district court class action that
18 was fully defended by the debtor and the officers and directors
19 and people knew that it was a potential to deal with it. So
20 why -- and you don't have to answer the question, but it's a
21 rhetorical question. Why wasn't there as much notice as
22 could've been given, so we never would have had this
23 discussion? I mean, I'm frustrated from that point of view,
24 because I -- I agree with you. We shouldn't be having this
25 discussion. But I don't think we would've had the discussion

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1 if the notice was a little more robust than you say was more
2 than robust.

3 MR. KAROTKIN: Okay, well, Your Honor, look, as I
4 said, I think the notice was more than sufficient. We are
5 where we are today. And we -- what we have proposed -- again,
6 if you believe the notice was not sufficient, we have proposed
7 a solution to that problem, which assures due process. A class
8 claim does not assure due process. What would you do -- what
9 are you going to do, Your Honor, if you allow the class claim,
10 you don't have an extended bar date. Then there has to be a
11 class certification procedure.

12 THE COURT: I know.

13 MR. KAROTKIN: And you determine they can't satisfy
14 that. Then what?

15 THE COURT: I don't know. I -- Mr. --

16 MR. KAROTKIN: So why doesn't -- why doesn't the
17 notice of the bar date fix all of that?

18 THE COURT: Mr. Karotkin, I have -- and I suspect you
19 have, too -- been struggling with this since it came to light.
20 Like, what in the hell am I supposed to do, if I may be so
21 blunt?

22 MR. KAROTKIN: Right.

23 THE COURT: Because I don't like either of the
24 outcomes, you know?

25 MR. KAROTKIN: Okay, but I'm saying if -- again, if

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1 you're concerned about due process, the only way to assure that
2 your concern is addressed is an extended bar date. That's the
3 only way to do it. A class claim does not do it. It will
4 never do it.

5 THE COURT: Well, but you're suggesting that the
6 system then, in our federal system of class claims is deficient
7 from a due process point of view. But you know what, it works,
8 too, right?

9 MR. KAROTKIN: Your Honor, let me -- can I ask you a
10 question?

11 THE COURT: In fact, what would you do if this were a
12 Chapter 7 liquidating, so you -- and it was -- everybody is
13 out. So it means nothing. If you don't get noticed in time to
14 find a claim, you're out of luck no matter what.

15 MR. KAROTKIN: That's right.

16 THE COURT: The advantage here of passing through is
17 if you have a claim, and we can speculate all day long, whether
18 anybody really has a claim, that claim will survive under a
19 pass through.

20 MR. KAROTKIN: But you can't pass through the equity
21 claim.

22 THE COURT: Well, I guess I don't agree with you. I
23 don't know why you can't.

24 MR. KAROTKIN: Because how would those claims be
25 satisfied?

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1 THE COURT: They'd get equity.

2 MR. KAROTKIN: In what amounts?

3 THE COURT: I don't know. But they -- to me, in a
4 simple world, you say that --

5 MR. KAROTKIN: And how are the investors in this
6 company -- how are the investors in this company supposed to
7 know how much equity's going to be issued and diluted?

8 THE COURT: I'm trying to answer your question. I'm
9 doing my best to answer your question.

10 MR. KAROTKIN: I'm sorry.

11 THE COURT: You have a hundred percent of equity, of
12 which twenty percent has been allocated to the victims. So out
13 of that other eighty percent, you take care of whatever you
14 have to take care of, period, the same as that -- what you do
15 if there was a class action for defrauded stockholders outside
16 a bankruptcy.

17 MR. KAROTKIN: And how do the equity investors in this
18 company, who are putting in substantial amounts of money, know
19 the impact of -- impact of that, which won't happen until after
20 confirmation?

21 THE COURT: I don't know.

22 MR. KAROTKIN: Well, that's a serious problem.

23 THE COURT: Maybe you have an estimation under 502(c).

24 MR. KAROTKIN: And how -- exactly, Your Honor. And if
25 they filed claims, we would have the best information for that

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1 estimation. The best information.

2 THE COURT: I understand. You're making an argument
3 for plan B, if you will, for the alternative, which you want me
4 to reject both of the alternatives. And as I say, I wish I
5 didn't have to even choose. I wish this hadn't happened. Let
6 me just look at one thing I meant to look up earlier.

7 Yeah, come to think of it, see, this is something I
8 was thinking about last night, before I looked at the book.
9 502(c) works great, but it doesn't work for equity, I don't
10 think. I don't know, or does it?

11 MR. KAROTKIN: It's still a claim.

12 THE COURT: Yeah, I guess for those purposes, it's a
13 claim. It's a contingent claim, but I mean, it's a claim based
14 upon an equity position that, under the statute, remains
15 equity. And I guess -- I guess that's true.

16 MR. KAROTKIN: Yes, but it's still -- it's still --

17 THE COURT: If you're a defrosted -- if you're a
18 defrauded shareholder, you're still a shareholder for -- no,
19 it's a claim. Well -- is it -- it's a claim --

20 MR. KAROTKIN: It's a dollar claim --

21 THE COURT: -- for estimation purposes, but it's
22 still --

23 MR. KAROTKIN: Yes, it's a claim for estimation
24 purposes.

25 THE COURT: But it's still equity.

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1 MR. KAROTKIN: It's still --

2 THE COURT: Once a shareholder, always a shareholder,
3 right?

4 MR. KAROTKIN: You can't bootstrap your position.
5 That's an intent of the statute.

6 THE COURT: Right, no, I agree. But we agree on the
7 law.

8 MR. KAROTKIN: Yes. And what I'm saying -- again, I
9 understand. You are concerned about due process. The only way
10 to fix that today is with an extended bar date. Not only will
11 that give notice to everybody, which a class proof of claim
12 will not. It avoids the problem of opt-outs. And then what do
13 you? Do they have to get notice later?

14 THE COURT: I don't know why in an opt-out, when you
15 have a discharge, why anybody would opt-out. Because opting
16 out means you opt right out, into the sewer.

17 MR. KAROTKIN: I mean, if they opted out, why aren't
18 they, then, entitled to another bar date?

19 THE COURT: Well, come on. That's not a good answer.

20 MR. KAROTKIN: I don't know the answer to that.

21 THE COURT: If you have notice of a bankruptcy and you
22 don't assert a claim, you're out. You have opt out because
23 you've chosen to opt out. I don't think this is like a class
24 notice, where you can opt out and preserve your right, because
25 in the more traditional class action, you don't have a

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1 discharge in the middle of it, right?

2 MR. KAROTKIN: I'm not sure I agree with you and I'm
3 not sure exactly --

4 THE COURT: But isn't that true? What if you got --
5 you know, you got a notice in the mail saying you're going to
6 get five dollars because somebody charged you too much for your
7 car repair. And so you say opt out, you have a right to sue
8 the company, right?

9 MR. KAROTKIN: Well, yeah --

10 THE COURT: Judge Breyer, right upstairs, doing the
11 Volkswagen --

12 MR. KAROTKIN: Again, but you're assuming, Your Honor,
13 that that person had adequate notice to begin with.

14 THE COURT: Correct..

15 MR. KAROTKIN: And you're concerned about that. And
16 what I'm saying, you can't fix that like that. It can't be
17 fixed. And if you don't certify the class, then what? And we
18 haven't even gotten there, to those issues. Again --

19 THE COURT: No, I know. Listen --

20 MR. KAROTKIN: -- the most elegant way to do this is
21 to have the bar date. Again --

22 THE COURT: You're a good lawyer, Mr. Karotkin. But
23 you keep switching the argument on me. You started this
24 argument by saying I should throw everything out because --

25 MR. KAROTKIN: I know, but you're --

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1 THE COURT: -- notice was adequate. And then you're
2 saying --

3 MR. KAROTKIN: Okay.

4 THE COURT: But then, what you're saying is the class
5 claimants are here. They're just trying to get paid as
6 lawyers. And there are all these other problems with the Rule
7 23 process. So let's go to the bankruptcy process, which is
8 what I wrote in the first place.

9 MR. KAROTKIN: Okay.

10 THE COURT: Show me why that might not be a good thing
11 to do.

12 MR. KAROTKIN: Okay. So let me -- let me address it.
13 Okay, number one, I think there was adequate notice. You don't
14 agree with me, okay. I accept the fact that you don't agree
15 with me, okay?

16 THE COURT: Okay.

17 MR. KAROTKIN: If you don't agree with me, what I'm
18 saying is the right solution is to extend the bar date.

19 THE COURT: Okay.

20 MR. KAROTKIN: And that will assure due process and
21 that will assure the more orderly administration of this case.
22 And let's keep in mind June 30th and getting distribution to
23 the fire victims.

24 THE COURT: No, there's no issue there. For reasons
25 that you've stated, the company has chosen not to just shortcut

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1 this by pass through. And you've said okay. We think that was
2 adequate notice, but if the Judge disagrees, we'd prefer the
3 plan -- the notice plan. I agree with you. So if we have an
4 extended bar date, whether it's twenty-eight days or two days
5 plus ten plus -- some number, your advice to me is that I
6 shouldn't worry about the schedule that has been discussed
7 about disclosure approval. We can address separately, either
8 today or elsewhere, whether that means you should change what
9 is going to be disclosed and to whom, because I think what
10 you're saying is that for all practical purposes, there doesn't
11 need to be disclosure to equity. I'm still not a hundred
12 percent sure that that's right, but I won't debate it with you.

13 But whether it's twenty-eight days or a little longer
14 or it doesn't matter, if notice goes out and my hypothetical
15 Mr. B is the only one that files a claim for five hundred
16 dollars, it's going to be easy. But if 10,000 Mr. Bs file a
17 claim for 50,000 each, you've got a problem. You've got to
18 deal with it, right?

19 MR. KAROTKIN: I have to deal with it and --

20 THE COURT: You've got to deal with it.

21 MR. KAROTKIN: -- certainly --

22 THE COURT: And I don't know what the answer is. I
23 haven't figured out the answer. I've been struggling with it.

24 MR. KAROTKIN: Certainly, the Bankruptcy Code -- the
25 Bankruptcy Code has the tools to deal with those circumstances.

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1 THE COURT: Well, but let's take a less-than-favorable
2 result. Suppose there is a robust amount of claims filed.
3 Somebody's going to have to figure out how to finance the exit
4 strategy and deal with that potential, right? It's the same as
5 any other kind of liability. It's the same kind of question
6 that has to be answered if there had been some other event --

7 MR. KAROTKIN: Or Your Honor --

8 THE COURT: -- that you hadn't anticipated.

9 MR. KAROTKIN: -- or Your Honor may have to estimate
10 that amount. But at least we'll have the information to do it,
11 rather than a class claim, which is pure speculation.

12 THE COURT: Okay.

13 MR. KAROTKIN: All right? Now, Your Honor --

14 THE COURT: Yes, sir?

15 MR. KAROTKIN: You did issue the order the other day,
16 with respect to mediation, which does -- which does --

17 THE COURT: And if I -- I want to apologize if I
18 confused anybody. I didn't mean to be in conflict with what I
19 wanted to hear today and the fact that I wanted the mediation.
20 I wanted the mediation to go forward if -- no matter what I do
21 here, whether I do nothing or something.

22 MR. KAROTKIN: Yes.

23 THE COURT: And it was just the timing, I wouldn't.
24 But that, there's nothing more -- no hidden agenda there.

25 MR. KAROTKIN: And we certainly agree with that and in

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1 fact, before you issued your order, we had already been in
2 discussions with the plaintiffs to schedule mediation.

3 THE COURT: Okay.

4 MR. KAROTKIN: And we want that to pursue and we're
5 anxious to have that pursue with -- to be pursued with Judge
6 Newsome. We think he can be constructive.

7 THE COURT: Do you want to put this issue on a short
8 hold?

9 MR. KAROTKIN: No, but -- no, but we can't really put
10 this on a short hold, because if we're going to --

11 THE COURT: Well, a short hold.

12 MR. KAROTKIN: Well, if we're going to have a notice,
13 you know, we need to get that process going as soon as
14 possible. A short hold of a couple of days or a week, maybe.
15 But longer than that, I just don't think --

16 THE COURT: Well, again --

17 MR. KAROTKIN: -- mechanically, it works.

18 THE COURT: I want you to understand something. I
19 wasn't sitting here plotting who to make life miserable for.
20 The way this thing came to me, and the law that I learned from
21 both sides, and the cases suggested to me that I've got to move
22 quickly on this either way, because if I -- if I say, sorry,
23 Mr. Karotkin, you're out of luck, you're stuck with Rule 23,
24 it's got to be dealt with. If I say sorry, plaintiffs, you're
25 stuck with another claims deadline, that's got to be dealt

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1 with.

2 And so, independent of that, for -- you know, that's
3 where I thought why not see if there can be a mediation any --
4 at the same time. So I certainly didn't imply, and I hope you
5 didn't get the message that somehow I was going to use the
6 mediation as a way to stall this. My job is to make a decision
7 on this, and I will do so, I promise you. And even if I make a
8 ruling, you still can have a mediation on this.

9 MR. KAROTKIN: Yes, absolutely.

10 THE COURT: So I'd encourage you to do it.

11 MR. KAROTKIN: And we intend to. As I said, we had
12 already discussed mediation and we intend to pursue it.

13 THE COURT: Okay. Well, good. I'm glad you did.
14 Again, I don't want to know if mediation is being discussed. I
15 don't discuss it with Judge Newsome. I look at what's
16 happening in the case and I look at and think about the
17 horrible of horrible choices here. And I promise you, I
18 agonize over is this going to screw up the timeline to get to
19 June 30th. But what do I do? Do I disregard the rights of
20 prospective claimants. And the same is true, by the way,
21 unrelated to this, on the FEMA and OES claims. I just said --
22 I'm going to remind the mediator, if you're still there, go do
23 something until I -- maybe something will happen on there, too.
24 Okay, I appreciate you clarifying that.

25 MR. KAROTKIN: Thank you, sir.

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1 THE COURT: So let me just say one more.

2 Oh, well, Mr. Bennett, why don't I hear from you on
3 that same subject? I didn't know --

4 MR. BENNETT: Yes.

5 THE COURT: -- you'd be here, but I assume it's
6 related to this.

7 MR. BENNETT: It is. Obviously, we've been heavily
8 involved in developing a plan and even more heavily involved in
9 developing the financing for the plan.

10 THE COURT: Right.

11 MR. BENNETT: So my first point for you is I think
12 achieving the June 30th confirmation deadline and the
13 subsequent financing deadline, which is hovering around
14 somewhere in August, is absolutely achievable. But it is
15 certainly threatened by the way we deal with this problem that
16 we have today. I do want to say that for the record, that we
17 agree that the debtors did actually give adequate notice. I
18 think, by the way, there's another solution that no one ever
19 talked about here, which is that if there really are persons be
20 out there that didn't actually have notice of what was going on
21 in this case, which I kind of suspect is a very small
22 population, given how heavily institutionally held the common
23 stock of this company was, then they can get relief from the
24 bar date. But --

25 THE COURT: Yeah, but that's not practical. Come on,

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1 you know that's not practical.

2 MR. BENNETT: I actually don't --

3 THE COURT: I don't want fifteen different motions for
4 relief from stay from fifteen investors.

5 MR. BENNETT: Okay. I'm going to move on to try to
6 solve some problems.

7 THE COURT: Okay.

8 MR. BENNETT: Okay, so Your Honor is concerned about
9 the prospect that the disclosure statement that will emerge
10 from the process we're about to enter will not be adequate from
11 the perspective of equity holders that have disputed claims
12 arising from the prospects of the -- allegations of inadequate
13 disclosure. And by the way, they are disputed claims. I don't
14 know if you realize this, but in the -- in the district court,
15 where the claims are being asserted against individuals, there
16 have been motions to dismiss filed.

17 THE COURT: Oh, I know. I know that.

18 MR. BENNETT: And it's about to be heard. The
19 briefing is complete.

20 THE COURT: No, it's submitted. It's not being heard.

21 MR. BENNETT: Right. I'm saying --

22 THE COURT: I'm telling you. It's submitted.

23 MR. KAROTKIN: Right, okay. It's about to be decided,
24 I should've said. I apologize.

25 THE COURT: Well, but I mean -- you know, I know that.

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1 But --

2 MR. BENNETT: Okay.

3 THE COURT: One of the things that I'll ask the other
4 side, the other side in the papers for today said I should let
5 the district court take care of things. As far as I know, I'm
6 taking care of all the claims here and the Judge Davila is
7 taking care of all the claims there.

8 MR. BENNETT: That is correct, Your Honor.

9 THE COURT: Okay.

10 MR. BENNETT: Absolutely correct. Okay, so if there
11 is a disclosure problem that develops, you will still be in the
12 solicitation period. There could be a supplemental disclosure
13 statement, so --

14 THE COURT: Well, what do you think? Do you agree
15 with Mr. Karotkin?

16 MR. BENNETT: I -- I completely agree with Mr.
17 Karotkin.

18 THE COURT: Well, okay, so let's clarify --

19 MR. BENNETT: Because my -- my primary objective here
20 is to do everything possible in this court to quantify the
21 potential maximum scope of the problem --

22 THE COURT: Okay.

23 MR. BENNETT: -- which we really think is near zero.

24 THE COURT: Stick with me. I take alternative B, I
25 open up a claims deadline and two claims are filed: one by Mr.

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1 A, the bondholder, and one by Ms. B, the shareholder.

2 MR. BENNETT: Okay.

3 THE COURT: Do you agree that the bondholder is
4 unimpaired and doesn't need any notice of anything? And the --

5 MR. BENNETT: He -- he's -- he or she is unimpaired,
6 and they will, nevertheless, receive lots of notice?

7 THE COURT: Well, they'll need -- they'll see notice
8 of the -- of the hearing, like anybody will. But they won't
9 get a solicitation and an invitation to vote, because they
10 won't be voters.

11 MR. BENNETT: That remains to be seen. They might or
12 might not.

13 THE COURT: For the bondholders?

14 MR. BENNETT: They might or might not. I happen to
15 believe that the -- that it is advantageous for the debtors to
16 solicit votes from the -- from the class of equity, because I
17 believe the class of equity will, in fact, support the plan --

18 THE COURT: No, you -- no. I said the bondholder.

19 MR. BENNETT: Oh, I'm sorry. The bondholder class
20 will be --

21 THE COURT: One claim comes from a bondholder. One
22 claim comes from a shareholder.

23 MR. BENNETT: Okay. The bondholder claim will be
24 unimpaired. They will not be solicited.

25 THE COURT: And under the plan, as presently filed,

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1 the bondholders are unimpaired. And so you don't even have to
2 change anything. In fact, the plan even contemplates any
3 510(b) entitlements.

4 MR. BENNETT: That is correct. The bond side will not
5 change.

6 THE COURT: We're in agreement on that. So what
7 happens if Mr. B files a claim, because he got defrauded as a
8 shareholder? What -- is there going to be solicitation or not?
9 And is it to everybody? Every equity holder, right?

10 MR. BENNETT: Okay. I don't know. There's two
11 questions that have to be answered. And quite frankly, there's
12 discussions going on about this right now.

13 THE COURT: Okay.

14 MR. BENNETT: Whether or not there's a way to put both
15 in the same class or whether they are going to be in separate
16 classes. And they --

17 THE COURT: I would think they would have to be in
18 one -- the same class.

19 MR. BENNETT: Actually, there's one --

20 THE COURT: But I'll leave it to you. I'll leave it
21 to you.

22 MR. BENNETT: I will suggest to Your Honor that
23 there's one problem with that right off the bat, which is that
24 there's insurance that covers the securities class action
25 claims. And they're all disputed. The fact that there's

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1 insurance as an additional source of distribution creates a
2 problem if it's in one class.

3 THE COURT: Well, I understand.

4 MR. BENNETT: So --

5 THE COURT: Insurance is a different issue. I'm just
6 thinking vis-à-vis a bondholder who -- I mean, a shareholder
7 who didn't buy stock during the class period and a bondholder
8 who did, I would think that they would be treated the same.
9 But I -- I'll leave that for another day.

10 MR. BENNETT: There are -- it turns out to be a little
11 more complex than that. I think you should leave that for
12 another day. The next version of the plan will have to deal
13 with this no matter what, so --

14 THE COURT: Okay.

15 MR. BENNETT: -- the next version of the plan, we'll
16 deal with it. And as to solicitation, whether there will be an
17 effort to obtain acceptances from this class, this -- if it's a
18 separate class of securities litigation claimants, there may or
19 may not be an effort to solicit acceptances from that class.
20 It may well be that we come to court and say that class has to
21 be crammed down.

22 THE COURT: Well, if I go with the alternative of
23 opening up a claims bar date, there will be a finite number of
24 members. And you can -- maybe you don't know the amounts, but
25 you can at least identify them. And -- but I think you or

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1 debtors' counsel is going to have to tell me at some point,
2 well, are we soliciting every equity holder? Or only the
3 previous -- you know, the non-defrauded ones? Or the allegedly
4 defrauded ones? And if so, you know, what do you do? And it
5 might make no difference. As I say, it might be that no matter
6 what number of votes they had, it's a non-issue. I don't know.

7 MR. BENNETT: That's correct. That is a possibility.

8 THE COURT: Okay.

9 MR. BENNETT: I would ask Your Honor to leave that
10 with us in the first instance --

11 THE COURT: Yeah, I will. I will.

12 MR. BENNETT: -- which is the correct procedure in any
13 event.

14 THE COURT: I agree.

15 MR. BENNETT: There'll be a plan amendment. We will
16 address this. Okay, so I want to come back to if there's any
17 problems at all with this process, and I don't think there will
18 be. I am -- I am with Mr. Karotkin that opening up the bar
19 date is the -- is not necessarily the perfect solution, but
20 it's the best solution we've got. I think the shortest
21 possible period that comports with due process is what Your
22 Honor should order, because we do have the June 30th deadline
23 and we don't really have the luxury of going as long as we want
24 to. So we want to have the shortest possible period. But even
25 if that period extends past the disclosure statement hearing,

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1 if there's a problem with the disclosure statement hearing, we
2 can send a supplement just for this class.

3 THE COURT: Well, I think you could have a supplement
4 disclosure, right?

5 MR. BENNETT: Right, we could do --

6 THE COURT: You could have this finite group of
7 disclosees and make an adequate disclosure to them.

8 MR. BENNETT: Correct. If we get it --

9 THE COURT: Okay, we're on the same page.

10 MR. BENNETT: If we get it wrong in the first
11 instance. But I don't think we will, but I'm saying there's a
12 failsafe. There's -- there'll be enough period time in the
13 solicitation period so that that could happen, okay? So I
14 think that's it.

15 But I want to keep coming back to -- and I don't think
16 I have to come back to it, but pass through is not an option,
17 because it leaves a possibility of undefined dilution. Forget
18 the existing shareholders. But it's the new shareholders, the
19 ones who are going to pay cash --

20 THE COURT: No, I -- I -- listen.

21 MR. BENNETT: Right.

22 THE COURT: I don't like that either. I don't like
23 any of these options. I wish there had been full notice, so
24 that the plaintiffs could never have argued about defective
25 notice. But you know, I can't change that.

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1 MR. BENNETT: Okay, all right. So what I think is
2 most important, at the end of the day, what is the most
3 important objective here is quantification of the maximum
4 possible amount of these claims. Like, what is really being
5 claimed? Okay? And here's where I think the pleadings are
6 decisive. So we have the pleading that was filed by the class
7 claimants. And the pleading filed by the class claimants
8 basically say that they don't have the faintest idea how big
9 their class is, in either the debt side or the equity side.
10 They've made a series of assumptions. When if you read it,
11 Your Honor, you'll see that those series of assumptions are
12 based upon the idea that this has to be a retail stock. It
13 was, to a degree. But it was also heavily institutionally
14 held. So the idea that we're going to have the kinds of
15 numbers that they want to throw up in the air is totally,
16 totally absurd. We will prove that --

17 THE COURT: But it's academic, if we give notice.

18 MR. BENNETT: It is -- we get to find -- that's
19 exactly my point.

20 THE COURT: Okay.

21 MR. BENNETT: We need to find out -- by the way,
22 ultimately, the class would have to find out. But they would
23 only find out years from now, when they either had a settlement
24 or whether, if they ever achieved a judgment, because they
25 don't have to get any information from the class plaintiffs

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1 until they actually have something to distribute.

2 THE COURT: But wait a minute. We're divide -- you're
3 talking about the district court?

4 MR. BENNETT: I'm talking about the -- no, if you --
5 if you had --

6 THE COURT: Oh, oh, if we had it here.

7 MR. BENNETT: -- a class claim here.

8 THE COURT: You mean if we had the Class 23 here?
9 Okay, okay, all right.

10 MR. BENNETT: Exactly. If we had --

11 THE COURT: I gotcha.

12 MR. BENNETT: -- if they -- we -- the class claims
13 that were filed -- I don't know if you read them. They don't
14 say a word about how many people we're dealing with.

15 THE COURT: No, I --

16 MR. BENNETT: They don't say a word --

17 THE COURT: I read what you read.

18 MR. BENNETT: Right. So there's nothing there. So
19 the -- whether we have to do discovery and estimation with the
20 class proof of claim, or we can have the simpler, much more
21 direct method of soliciting -- you know, giving another
22 notice --

23 THE COURT: Not soliciting. Not soliciting.

24 MR. BENNETT: -- and seeing what comes in. Not
25 soliciting.

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1 THE COURT: Sending out a notice.

2 MR. BENNETT: Sending out notice and seeing what comes
3 in.

4 THE COURT: And if --

5 MR. BENNETT: Now, let's talk about our contingencies.

6 THE COURT: -- if five claims come in, your problem's
7 solved, right?

8 MR. BENNETT: And I don't have to visit this topic
9 with you again. But if we have more than that, it's possible
10 that I will have to visit this topic with you again.

11 THE COURT: Okay.

12 MR. BENNETT: And I'm hoping that we don't. If it's
13 a -- but it can't not be a discreet universe. It may be a big
14 universe or a small universe. But we'll know exactly what
15 we're dealing with.

16 THE COURT: Well, what you're saying, Mr. Bennett, I
17 think, because you're a career bankruptcy lawyer and I used to
18 be one, is we're used to how the bankruptcy system works, and
19 we have this place called notice and claims. And that's a
20 whole different ballgame from the way they do it in the world
21 where you don't know how many people bought a defective
22 whatchamacallit. But I want to ask you what I should've asked
23 Mr. Karotkin and that's what wasn't mentioned -- it wasn't
24 responded to in my docket text, is how do we divide the -- make
25 sure the claimants aren't filing proofs of claim on derivative

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1 claims? They don't have a right to assert a derivative claim
2 in this case, right?

3 MR. BENNETT: We have to look at the claims that come
4 in and decide and we may have to object to a bunch.

5 THE COURT: How about in the notice? Is there a way
6 to put it in the notice, what not to do?

7 MR. BENNETT: We can --

8 THE COURT: And I want the plaintiffs to tell me that,
9 too, because that -- that to me is one of those very iffy
10 things. And you know, the TCC's concerned about it, as well.

11 MR. BENNETT: Okay. We can -- I'm all for including
12 whatever appropriate cautionary language everyone can agree to
13 to make sure that frivolous claims -- claims that shouldn't be
14 filed aren't filed.

15 THE COURT: No, I didn't -- I didn't mean frivolous.
16 It could be the best claim in the world, but it's a derivative
17 claim.

18 MR. BENNETT: Understood, right. Okay. But frivolous
19 by the person doing it. All right, yes.

20 THE COURT: No, but I --

21 MR. BENNETT: I think that's -- that's right.

22 THE COURT: I had to think about this, too. And I
23 looked at that proof of claim form and I'm going, what do I do
24 if I'm this investor, not in Northern California, in Paris,
25 France, and I get this notice? Well, what do I do? How do I

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1 know what's a derivative claim and what is my own claim? And
2 the answer is most people have no clue, probably. Right?

3 MR. BENNETT: It -- it -- I, frankly, think that
4 almost no matter what we say, we'll have the potential problem
5 anyway. But that's why we process claims.

6 THE COURT: Yeah.

7 MR. BENNETT: We figure it out.

8 THE COURT: I agree.

9 Mr. Karotkin, do you agree with that analysis? I
10 mean, I meant to ask you that same question and -- but you
11 don't need to restate it, if you believe --

12 MR. KAROTKIN: No, I agree. And the way the proof of
13 claim form can be drafted, and I think we have, is directed as
14 to whether this individual person suffered a loss.

15 THE COURT: Well, you -- you did --

16 MR. KAROTKIN: And that's personal to that person.

17 THE COURT: But --

18 MR. KAROTKIN: That's not a derivative claim. So if
19 it's written in that way, it should be clear. But again, as
20 Mr. Bennett said, we can address that if the claims are filed.

21 THE COURT: If Mr. Bennett's right, that a number of
22 the investors are institutions that have in-house general
23 counsel, that's one thing. If there are people out there
24 getting this notice that aren't trained in the law, they
25 aren't -- shouldn't be assumed to know the difference between a

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1 derivative claim and a direct claim. The guy says, yeah, I
2 bought that stock. I paid fifty-five bucks for it and now it's
3 trading at eight bucks. I guess I have a claim. So how does
4 that person have any way of knowing where we, in the bankruptcy
5 world, would say you only get to assert your direct claims
6 here. You take your derivative claims elsewhere?

7 MR. KAROTKIN: I think that they will file their
8 claims, and then we can look at them and make those
9 determinations. That's how it would always work. But again,
10 if the --

11 THE COURT: Well, but on --

12 MR. KAROTKIN: The issue is --

13 THE COURT: -- but on the --

14 MR. KAROTKIN: -- they will file -- they will be
15 notified to file a claim if they suffered a direct loss on
16 account of --

17 THE COURT: You were able, obviously, for the hundreds
18 and hundreds of thousands of fire survivors, to make it clear
19 how they're supposed to assert their claim. I found that --
20 and again, add this to the list of things that I too have been
21 struggling with, is what happens if we do send this claim out?
22 Is it going to be more confusing rather than less confusing?
23 And I don't know the answer on how to make it more helpful to
24 those who should get due process but not muddy up the process
25 by asserting what they shouldn't be asserting. So it just adds

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1 to the problem.

2 MR. KAROTKIN: But I think that's easily addressed.
3 If they believe they have a claim, they can file the claim.
4 And like in any other situation, if they had gotten the
5 original notice of the bar date, they would have either filed a
6 claim or not filed a claim, and we would have --

7 THE COURT: And we'd be done --

8 MR. KAROTKIN: -- figured it out.

9 THE COURT: -- and we never would have had this
10 discussion.

11 MR. KAROTKIN: But again, you would have the same
12 issue as the derivative or a nonderivative, and we would have
13 figured it out.

14 THE COURT: Okay, I'm going to hear from the
15 plaintiffs. Let me -- make an opening statement on the
16 plaintiffs' side. And I'm --

17 MR. RICHARDSON: Your Honor, did you not want to hear
18 from the same side entirely before hearing the plaintiffs?

19 THE COURT: Oh. I wasn't even looking who -- yeah.
20 Go ahead. From the TCC?

21 MR. RICHARDSON: Thank you, Your Honor.

22 THE COURT: Is that -- yeah, just state your name for
23 the record.

24 MR. RICHARDSON: Good afternoon, Your Honor. David
25 Richardson of BakerHostetler, on behalf of the official

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1 committee of --

2 THE COURT: Mr. Richardson, I --

3 MR. RICHARDSON: -- tort claimants.

4 THE COURT: -- I expected you to be here; I just
5 didn't identify you and I wasn't --

6 MR. RICHARDSON: Also with me is --

7 THE COURT: -- looking carefully. So -- no, I know
8 who you are.

9 MR. RICHARDSON: Also with me is Mr. Julian, Robert
10 Julian, today.

11 THE COURT: I know. I know who he is, too.

12 MR. RICHARDSON: Your Honor, there's four issues I'd
13 like to address. First, as the Court knows from the letters
14 it's received, some of the briefs that have been filed, the TCC
15 has a challenge ahead of it, getting fire victims to vote in
16 favor of the debtors' plan --

17 THE COURT: I'm well aware of that.

18 MR. RICHARDSON: -- both for accurate understandings
19 of what's in the plan, such as concerns about FEMA claims, and
20 some misunderstandings, such as how stock will be handled and
21 whether or not they will receive it. But when the RSA was
22 negotiated, there was no two-billion-dollar stock claim at
23 issue. There was a district-court action, but the bar date had
24 passed. No class claim had been filed. No motion for a class
25 claim had been filed. And the TCC negotiated its settlement

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1 with the debtors on the understanding that there was no such
2 claim.

3 So we come here with a dual concern: first, an
4 outcome that doesn't impact the interests of fire victims --

5 THE COURT: Well, you got to -- I got to stop you for
6 a minute. Look, I'm not trying to go back to question how the
7 negotiation led to the RSA. But the district-court action
8 started with the debtor alive and well, and a defendant. And
9 sure, there was no motion to file a 7023 claim, but one could
10 not have assumed there was no exposure of the corporate debtor.

11 And so it just is what it is. The claim that was
12 filed was filed a couple of months after the bar date. And I
13 heard extensive argument about it and made a decision through
14 my tentative ruling, and that's where we are. So we're there.

15 MR. RICHARDSON: Yes, Your Honor.

16 THE COURT: I understand. And you made the point
17 before about making sure that this doesn't somehow undermine
18 what was negotiated for the benefit of fire survivors. And I'm
19 fully aware of that.

20 MR. RICHARDSON: But the TCC has a different
21 perspective on this. First, a lead plaintiff in a class-action
22 case has a fiduciary to their putative class. If they are
23 truly a class-action plaintiff with a direct claim against the
24 debtors, they had a duty to act on behalf of their class in
25 this case. Not only did they not come forward during the

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1 notice period to address any notice concerns, but the TCC was
2 of the view, and remains of the view, that that class action is
3 really stating nothing but derivative claims.

4 Now, I don't expect the Court to rule on that issue
5 here. We will be filing under an adversary proceeding shortly
6 that addresses that issue. All the --

7 THE COURT: Against whom?

8 MR. RICHARDSON: Against the plaintiffs -- the lead
9 plaintiffs in that action.

10 THE COURT: Well, what if I grant this alternative
11 motion? Then --

12 MR. RICHARDSON: It will still be a relevant adversary
13 proceeding --

14 THE COURT: Well, who's going to be the defendant?

15 MR. RICHARDSON: The lead plaintiffs.

16 THE COURT: But wait a minute. If I don't grant their
17 motion and I open up the bar date, the lead plaintiffs are
18 still the defendants on your adversary proceeding?

19 MR. RICHARDSON: Yes, because the district-court
20 action still goes forward.

21 THE COURT: But the defendants --

22 MR. RICHARDSON: The district --

23 THE COURT: -- the defendants -- these defendants are
24 protected by the stay.

25 MR. RICHARDSON: Yes, but the action that we believe

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1 is derivative is being signed (sic) to the trust.

2 THE COURT: Okay, I'll tell you what; if you believe
3 an adversary proceeding is necessary, we'll deal with it.
4 Let's stick with "for now".

5 MR. RICHARDSON: Our dual concern here today is an
6 outcome that doesn't impact the interests of fire victims by
7 giving priority to an equity claim over the interests of fire
8 victims.

9 THE COURT: And how does it do that?

10 MR. RICHARDSON: It does it by the possibility of
11 passthrough or ride-through. At the moment, this is a pre-
12 petition claim that is subordinated under 510(b), below the
13 interests of fire victims.

14 THE COURT: Right.

15 MR. RICHARDSON: If it passes through, it becomes a
16 two-billion-dollar claim against the reorganized debtor, in
17 which the trust is the largest single shareholder. It will
18 have an impact on the value of shares that are being held for
19 the benefit of fire victims.

20 THE COURT: Still subordinated. It's still
21 subordinated. 510 still works, doesn't it?

22 MR. RICHARDSON: Post -- for a ride-through claim --

23 THE COURT: Well, but --

24 MR. RICHARDSON: -- post-confirmation?

25 THE COURT: -- but it all arises pre-petition. In

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1 other words, a debtor could say, "I'm not going to deal with
2 this group of creditors. I will deal with them later." I
3 don't think you suddenly lose the benefit of the subordination.
4 It doesn't matter. The debtors' counsel rejected the idea of a
5 passthrough. I don't know that, if you're worried about that,
6 I'm just going to go impose it on them. I don't know that I
7 have the right to do that. I suppose the real issue is, if I
8 deny both the class and the new claims deadline, then I guess
9 I'm creating the problem. But I'm the one that wrote the
10 tentative ruling saying I should consider a new deadline.
11 So --

12 MR. RICHARDSON: Your Honor, I don't believe you
13 are --

14 THE COURT: Let's --

15 MR. RICHARDSON: I don't believe you are --

16 THE COURT: Let's --

17 MR. RICHARDSON: -- creating a problem if you deny
18 both of those options and deny the motion.

19 THE COURT: What would happen?

20 MR. RICHARDSON: You've asked where does Shareholder B
21 go if their rights are not protected in this case. Shareholder
22 B still has a pending class-action lawsuit in district court.
23 If Shareholder B has a valid direct claim, Shareholder B has a
24 lawsuit against directors and officers, who have an insurance-
25 policy tower worth at least two --

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1 THE COURT: What about Shareholder B's claim against
2 the debtor?

3 MR. RICHARDSON: It's the same claim. They just
4 separated it out from their lawsuit --

5 THE COURT: But what happens to it --

6 MR. RICHARDSON: -- to address (sic) with it here.

7 THE COURT: What happens to it analytically? If I
8 deny the motions today -- my hypothetical Mr. B --

9 MR. RICHARDSON: Yep. If --

10 THE COURT: -- went to law school and learned that he
11 could have a direct claim against the corporate debtor.

12 Haven't I just discharged him or --

13 MR. RICHARDSON: If he had a direct claim.

14 THE COURT: -- or, alternatively, denied him due
15 process, in which case the claim survives?

16 MR. RICHARDSON: If he had a direct claim, we believe
17 notice was sufficient. His representatives, who had a
18 fiduciary duty to him, did not act to protect his rights. And
19 his claim remains active in a district-court action, not only
20 against officers and directors but against twenty-three of the
21 largest financial institutions in the country.

22 THE COURT: But how about against the corporate
23 debtor?

24 MR. RICHARDSON: That claim -- as is typical in
25 bankruptcy, when a debtor is one of the defendants and goes

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1 through bankruptcy, that claim might get discharged.

2 THE COURT: But we're back to the question of due
3 process.

4 MR. RICHARDSON: We are.

5 THE COURT: So --

6 MR. RICHARDSON: And his representative --

7 THE COURT: -- isn't there lots of law that says,
8 notwithstanding the language of Chapter 11 that says a
9 confirmation discharges everything, that in fact it doesn't
10 discharge everything? It doesn't discharge claims to which due
11 process has not been afforded. Right? Isn't that fundamental?

12 MR. RICHARDSON: Except that we believe and agree with
13 the debtors, the due process has been done here.

14 THE COURT: Well, I know, but no court has determined
15 it.

16 MR. RICHARDSON: Correct.

17 THE COURT: And --

18 MR. RICHARDSON: But I believe one of the important
19 factors in determining whether due process was done here is the
20 fact that the lead plaintiffs, who were involved in the entire
21 process, owe a fiduciary duty to Shareholder B --

22 THE COURT: Well, you -- what you --

23 MR. RICHARDSON: -- and did not step forward in a
24 timely basis.

25 THE COURT: But Mr. Richardson -- this is like -- I

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1 won't draw a bad analogy here. What you're saying is the
2 plaintiffs didn't do their job, therefore we should say it was
3 okay for the debtor not to have done its job, and therefore
4 there may be a finite group or a large group of people who have
5 been denied due process; they can either blame the lawyers for
6 the debtor or blame the lawyers for the class, but either way
7 they're out of luck. That doesn't seem like the right way to
8 do it.

9 MR. RICHARDSON: Because the way we look at it, we
10 believe the debtor did their job.

11 THE COURT: I know you do. But you don't deny that
12 there was a method to provide more direct notice to actual
13 known people; do you?

14 MR. RICHARDSON: Think there could --

15 THE COURT: You don't deny that; do you?

16 MR. RICHARDSON: There could always be more notice.

17 THE COURT: But we have, in the record from the
18 papers, a method -- an established method in the securities
19 world, through nominees, to give better notice than was given.
20 And it doesn't give every person on Earth notice with bells and
21 whistles, but it is a methodology that wasn't followed here.
22 You can't deny that.

23 MR. RICHARDSON: I don't deny that, Your Honor --

24 THE COURT: Okay. Okay.

25 MR. RICHARDSON: -- but I don't agree that the -- by

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1 not following that procedure, there was necessarily a denial of
2 due process.

3 THE COURT: Well, one of -- okay, fine. I want you to
4 make the rest of your argument so I can hear the other side.

5 MR. RICHARDSON: Your Honor, the third point --

6 THE COURT: One of my -- well, no, but I'm just going
7 to -- I'm going to -- I'm going to finish my thought.

8 I obviously felt that I needed to explore what the
9 case law told us we could do as this alternative, because I was
10 satisfied that it appeared that there could have been a better
11 effort to do the process. So I want to go back to what you're
12 concerned about, and -- go ahead.

13 MR. RICHARDSON: Thank you, Your Honor. As is clear
14 from everything I've just said, the TCC continues to believe
15 that denying the motion is the proper outcome. Upending the
16 claims process at this late stage, for a putative-class claim
17 that is not certified, hasn't been tested, remains subject to a
18 pending motion to dismiss, and has no concept of what its own
19 damages is -- damages are for the class, is too disruptive in a
20 case that is proceeding along the schedule that it is.

21 The parties knew of the compressed schedule, they were
22 aware of the claims bar date, they were aware of the claims-
23 noticing procedure, and they did not follow through with their
24 fiduciary duties. Their mistake should not be a burden on this
25 Court or a burden on the parties or the claims of other

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1 creditors. For those reasons, we think denial is the proper
2 result. To whatever extent the Court does not agree with us
3 and believes that there needs to be a remedy, we concur with
4 the debtors that the individual proof-of-claim process would be
5 the only alternative process that would make sense here, and we
6 believe that the debtors have set out a proper procedure.

7 THE COURT: Okay. Thank you very much, Mr.
8 Richardson.

9 Mr. Michelson.

10 MR. SLACK: Your Honor, Richard Slack from Weil. Will
11 you indulge me with one point in response to a question that
12 you --

13 THE COURT: Actually --

14 MR. SLACK: -- asked earlier?

15 THE COURT: Mr. Slack, I thought I was going to get
16 you as the point guy today, but your colleague, Mr. Karotkin,
17 took the heat. So I'm happy to hear from you. What can you
18 help me on?

19 MR. SLACK: So Your Honor, you asked a question of Mr.
20 Karotkin about why didn't the debtor give actual notice,
21 through the nominees, to absent class members. And I wanted to
22 address that really in a couple different ways, but the first
23 is, to really understand what the situation was at the time, we
24 had a -- we had a pleading by plaintiffs. That pleading -- and
25 they could have written down any number. They could have said

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1 three-and-a-half years, which is what they did as a class.
2 They could have wrote five years. They could have wrote seven
3 years. That pleading has not yet -- and it's what the
4 Musicland factors -- and one of the reasons the Musicland
5 factors take into account a class that's already been
6 certified -- that facts here is that that pleading, which just
7 said, hey, we think their claims for two-and-a-half years was
8 untested, because there was no class ever certified, nor was it
9 not certified.

10 And we gave notice that (indiscernible), that notice
11 is given. We included Ms. Pullo's declaration that said she'd
12 been involved in a number of cases (indiscernible) has been a
13 full-pay (ph.) case, and debtors don't do notice in the way
14 that the plaintiffs here suggest we needed to do.

15 And Your Honor, you put it, I think, correctly. Maybe
16 there is a way of doing better notice, but the fact is that
17 that doesn't make it an unconstitutional way of giving notice
18 by giving instructive notice to a class that has not yet been
19 certified. And as I think is pretty clear, we actually didn't
20 note in the actual shareholders rule (ph.) where you could
21 potentially get notice through the nominees. But we didn't
22 know. And the fact is that just because a plaintiff asserts --
23 again, just to make an assertion of a class doesn't make those
24 people known creditors such that you have to give notice.

25 So Your Honor, I don't know whether that helps you

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1 there, but I think that's an answer to the question that you
2 asked.

3 THE COURT: Mr. Slack, my frustration is that the
4 district-court action was underway, the class wasn't certified,
5 but the allegations of the complaint identify the universe of
6 people for whom the plaintiffs were purporting to act. And it
7 didn't -- to me, it was, in retrospect -- and hindsight is
8 cheap. But it seems to me that, for what looked like a
9 relatively easy way to extend to at least that universe is
10 something that, if it had been done, I don't know that we ever
11 would have gotten to this point. But it doesn't matter. We're
12 here now. And for all the reasons that we've said, we're
13 trying to do something about it. So my choices are to deny
14 everything and move on, or to go to one of these alternatives.

15 So I'm not asking anybody to go back and reinvent the
16 wheel. We're just dealing with it on February 20th rather than
17 last October. Okay?

18 MR. SLACK: I think, Your Honor, the -- I sure do
19 appreciate that. And I would just say that I think Your Honor
20 had the (indiscernible) proceeding in the district court, that
21 had not yet been tested, is the point. There have been --

22 THE COURT: Well, I know.

23 MR. SLACK: -- no class certifica --

24 THE COURT: You keep saying that but, I mean, that --
25 there were a lot of things that weren't tested, and that -- it

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1 would be a whole different situation if that action hadn't been
2 filed and suddenly after the fact we're saying, "Well, hey,
3 somebody created this. Let's make up a class." I mean, what
4 would I do if the plaintiff said, "We're asserting claims on
5 behalf of people for the last ten years who bought stock"? You
6 know? They picked three-and-a-half; whether it was the right
7 amount or not, it doesn't matter.

8 Anyway. Let's go out of it. Ms. Michelson, are you
9 standing -- are you going to make the argument, or your
10 colleagues on the phone? And you're welcome to.

11 MS. MICHELSON: Your Honor, Randy Michelson for the
12 movant party. While I would love to make the argument that
13 Bankruptcy Rule 7023 is the solution to the problem that was
14 caused by the failure of the debtors to provide notice, Mr.
15 Etkin, who is on the phone, will make that argument.

16 THE COURT: Okay.

17 MS. MICHELSON: Thank you.

18 THE COURT: Mr. Etkin, I thought maybe I'd hear from
19 you. And you took me up on the offer to appear by phone, so
20 you're up.

21 MR. ETKIN: I did, Your Honor. Well, our fees aren't
22 being, one (ph.), written by the estate, and we took you up on
23 your offer.

24 So after listening to the last hour, well, we have
25 obviously a lot to unpack and a lot of territory that was gone

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1 over again, though we had a full-blown hearing on the 29th, and
2 we --

3 THE COURT: Yeah, but let's not go there. I want you
4 to focus on what are my choices now, going forward. I don't
5 want to go back into Ms. Pullo's declaration, whether the
6 record was closed, and whether you could have done something or
7 they could have done something. That's not constructive. I
8 got to deal with the problem now, February 20th, going forward.
9 So help me.

10 MR. ETKIN: Well, I understand that, Your Honor, and I
11 think we tried to help you, and I want to help you, but there's
12 been a lot of stuff brought up against the world (ph.) over the
13 last hour and, frankly, and despite the fact that I've been
14 doing this a long time, I'm finding it difficult not to address
15 folks who think they're aware and understand more what our
16 fiduciary duties are, as lead counsel, and --

17 THE COURT: I know. I know you feel that way --

18 MR. ETKIN: -- folks who are saying --

19 THE COURT: -- but you don't have to --

20 MR. ETKIN: -- that it's all about the --

21 THE COURT: -- you don't have to --

22 MR. ETKIN: -- that it's all about the money.

23 THE COURT: Mr. Etkin, you don't have defend your
24 professionalism. You don't have to worry. This isn't a fee
25 hearing. Tell me what to do to fix the problem, and why I

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1 should ignore Mr. Bennett and Mr. Karotkin and Mr. Slack and go
2 with your Rule 23 fix.

3 MR. ETKIN: Right. Well, Mr. Bennett's kind of new to
4 the party, so I'm going to (indiscernible) an objection again.
5 I even can take advantage of --

6 THE COURT: I don't care. He's not new to me.

7 MR. ETKIN: If the Court can be patient on the --

8 THE COURT: Mr. Etkin, he's not new to me.

9 MR. ETKIN: I understand.

10 THE COURT: He's a major representative of a major
11 group of equity holders. So help me go --

12 MR. ETKIN: I --

13 THE COURT: -- fix the problem.

14 MR. ETKIN: Okay. Your Honor, I think that we'd
15 outlined the best way to fix the problem here, and that is by
16 the Court moving forward with its inclination in the
17 (indiscernible), which we led, obviously. And given that the
18 Musicland factors have been satisfied by the lead plaintiffs,
19 the best (indiscernible) to avoid -- not to create but to avoid
20 this so-called parade of horrors is simply to have Rule 23
21 apply. There is no reason why all of the issues, even
22 certification of the class, has (sic) to be resolved in advance
23 of confirmation. Although if the Court ordered us to move
24 forward quickly with the certification motion, we could do
25 that. But it's unnecessary.

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1 The Court has recognized again the subordinated
2 claims. And the debtor has recognized, in their papers, that
3 the only ones who stand to be potentially diluted in this case
4 are the equity holders, to the extent that our claims on a
5 classwide basis are upheld.

6 THE COURT: Well, wait a minute. That --

7 MR. ETKIN: And quite frankly, Your Honor --

8 THE COURT: Wait. Hold on. Mr. Etkin, that
9 oversimplifies it, because we're not going to -- we're not
10 dealing just with current equity holders. We know, from the
11 record, there're going to be new equity holders. And the
12 question is --

13 MR. ETKIN: That's right.

14 THE COURT: -- how do we quantify who they're sharing
15 the load with if this class comes in.

16 MR. ETKIN: Well, the way that I see it, Your Honor,
17 the plan contemplates a rights offering that, to the extent
18 people buy into the rights offering, they get their shares.
19 Their shares aren't available for distribution to current
20 equity holders by virtue of the current equity holders' status
21 as a current equity holder.

22 So there's stock in the reorganized entity that is
23 going to be available, and the plan very clearly says that it's
24 subject to dilution. So everyone appreciates and understands
25 that whatever's made available to current equity holders under

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1 a plan is subject to dilution. And that is the pool that's
2 available, as we understand it, for distribution to current
3 equity holders and, to the extent that there's an allowed class
4 claim, to those claimants.

5 THE COURT: Mr. Etkin, what --

6 MR. ETKIN: Your Honor --

7 THE COURT: -- what happens if I grant this motion and
8 we then proceed with the certification process and, down the
9 line, whether it's in the next two months or the next two
10 years, the class certification is denied? Then what happens?

11 MR. ETKIN: Your Honor, I'm not entirely sure, but at
12 that point there's no class and there're class claims. And to
13 the extent that there are folks out there, they still have
14 their rights with respect to the pending securities litigation.

15 THE COURT: Well, forget that. No, I want to --

16 MR. ETKIN: But

17 THE COURT: -- I want to forget the pending
18 litigation. Again, as I said, maybe -- I don't know if you
19 picked this up in my comments, but one of the things that
20 confused me about your submission was that you seem to imply
21 that somehow this Court sends something back over to the
22 district court. And I don't see it that way. I see that --

23 MR. ETKIN: So let me clarify that, Your Honor.

24 THE COURT: Well --

25 MR. ETKIN: Let me clarify that for you --

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1 THE COURT: Well, clarify it, but --

2 MR. ETKIN: -- because I think there might be a --

3 THE COURT: Go --

4 MR. ETKIN: -- there might be a misunderstanding.

5 THE COURT: Go ahead.

6 MR. ETKIN: We think -- the mention of the district
7 court was solely for purposes of having a venue available to
8 distribute whatever distribution there might be out of the
9 Chapter 11 case, to class members --

10 THE COURT: Well, why would that be?

11 MR. ETKIN: -- not --

12 THE COURT: What good would -- what would the purpose
13 of that be? The debtor -- if the debtor has --

14 MR. ETKIN: Because it would save --

15 THE COURT: If the debtor has something to pay to this
16 group of folks, it can pay them: either pay them in money or
17 pay them in distribution of equity. Why should the district
18 court be involved in that in any way? I don't understand that.

19 MR. ETKIN: Your Honor -- only for administrative
20 convenience, Your Honor, quite frankly. I've been involved in
21 a number of these cases over the years, and I have one that
22 comes to mind immediately; is a case called ResCap, in New
23 York, Residential Capital, where there was a resolution with
24 the securities class in the bankruptcy and, rather than
25 spending the time, effort, and money, through the Chapter 11

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1 case, to distribute that settlement -- the settlement proceeds,
2 it was handled through the district court, where a case was
3 pending --

4 THE COURT: Okay, but that --

5 MR. ETKIN: So it's strictly administrative
6 convenience.

7 THE COURT: All right. But let's go back to my
8 problem today. So walk me through your best-case timeline if I
9 grant your 723 motion. And we talked about it at the prior
10 hearing, but I've got to be realistic. So it's February 20th.
11 Just imagine that I am persuaded by your side and I issue an
12 order. And so what do you -- what's the timeline, going
13 forward, that you see happening in your role on behalf of the
14 plaintiffs in the bankruptcy court, not in the district court?

15 MR. ETKIN: All right, I'm going to -- that's all I'm
16 talking about, Your Honor: in the district court.

17 THE COURT: So what's the timetable?

18 MR. ETKIN: The timetable -- I think it's important to
19 note that there is nothing in the plan, nothing in the
20 disclosure statement -- no provision of any RSA has been cited
21 which requires the class claim -- and Your Honor, let's face
22 it: there are bankruptcy cases -- large bankruptcy cases
23 throughout the country, where there are large contingent and
24 unliquidated claims that have to be dealt with and, more often
25 than not, they're dealt with on a post-confirmation basis.

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1 THE COURT: Yeah, you're not -- Mr. Etkin, you're
2 not --

3 MR. ETKIN: So --

4 THE COURT: -- you're not answering my question. I
5 don't know another bankruptcy case in the country, big or
6 large -- big or small, that had 80,000 victims of massive fires
7 and an attempt to get a plan confirmed in the next four months.
8 So let's get to my case in this court. So what is the
9 timetable that you would follow as counsel if I grant your
10 motion to assert the class claim? What comes next? What's on
11 your to-do list?

12 MR. ETKIN: Well, our to-do list, Your Honor, would be
13 that -- as we indicated in our motion as originally filed, is
14 to set a briefing schedule with respect to class certification,
15 in the bankruptcy court --

16 THE COURT: Okay, so you have to --

17 MR. ETKIN: -- and have that determined.

18 THE COURT: To get a briefing schedule, you have to
19 file your motion; right?

20 MR. ETKIN: Well, Your Honor, I think part of it would
21 be filing our motion for class certification, in the first
22 instance.

23 THE COURT: Okay.

24 MR. ETKIN: And then there'd be responses. And then
25 it would be dealt with. And if discovery is necessary, that

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1 could take place as well. All I'm trying to point out to the
2 Court is that nothing that we're doing, in our view -- and I
3 haven't heard anything that's credible to the contrary -- is
4 going to stand in the way of the fire victims getting the
5 benefit of their bargain with respect to the RSA if it's -- if
6 the plan is ultimately confirmed, and for creditors to get paid
7 as contemplated under the plan.

8 THE COURT: Okay, Mr. Etkin, I have --

9 MR. ETKIN: Uh --

10 THE COURT: Mr. Etkin, I have to interrupt for one
11 second.

12 (The Court and the clerk confer.)

13 THE COURT: No, Mr. Etkin, I want to -- I got -- I'm
14 back to you again. I don't think you're answering my question.
15 I know about those broad issues. I want a timetable of when
16 you will be -- would file something. So you would file your
17 motion for class certification. Then there would be --

18 MR. ETKIN: Correct.

19 THE COURT: -- an opportunity for some preliminary-
20 type dealings, right, like whether there's a representative
21 class or whether there's an internal conflict. I mean, let me
22 ask you a question. Could you, if you were in that position,
23 represent both the equity claimants and the bond claimants?

24 MR. ETKIN: Well, I would, frankly --

25 MR. DUBBS: Your Honor --

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1 MR. ETKIN: Go ahead.

2 THE COURT: Well, now somebody else is talking.

3 MR. DUBBS: Your Honor, excuse me. This is Thomas
4 Dubbs. I'm lead counsel in the securities case.

5 The securities case has, as a subclass, the debt. So
6 whatever issues there are with respect to the debt are handled
7 by counsels for that subclass. So there's no conflict there.

8 But let me get back to the question --

9 THE COURT: Well, no, don't get back. That --

10 MR. DUBBS: -- that I think Your Honor --

11 THE COURT: That means there's a separate law firm
12 that isn't even involved yet; right?

13 MR. DUBBS: No, it's already involved. They're
14 already in the papers. They're already up to speed.

15 THE COURT: I know, but they're not -- they haven't
16 appeared in this court, have they?

17 MR. DUBBS: No, they haven't appeared in this court,
18 as we're lead counsel --

19 THE COURT: Okay.

20 MR. DUBBS: -- and they work under our direction.

21 THE COURT: Okay. Okay. All right, so there's a --
22 look, just give me some basics. So now we have at least two --

23 MR. DUBBS: Well, what I'm trying to -- now, in terms
24 of the timeline, all of the major law firms on the other side
25 have class-action departments that do this stuff routinely.

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1 And they know us, and we know them. We can make a motion for
2 class certification within two to three weeks. We can get this
3 teed up for Your Honor in less than a month. I mean, this is
4 not nuclear physics.

5 And most of the issues involved in this, in many
6 cases, are stipulated to. I mean, PG&E is a huge company;
7 right? (Indiscernible) it doesn't trade on an official market
8 is ludicrous. Everybody knows that. It's followed by a
9 gazillion analysts. This is not a -- this is not an instance
10 where you have a straw (ph.) company with all kinds of class-
11 certification issues running around. This is fairly
12 straightforward.

13 Now, they have their defenses and have put forward
14 their defenses, but they're very experienced at this, and this
15 can be done very, very quickly, and Your Honor can decide this
16 up or down very, very quickly. I mean, this is not a big deal.

17 THE COURT: So what's the --

18 MR. DUBBS: And --

19 THE COURT: -- definition of "quickly"? What's the
20 definition of when you would believe it would be submitted for
21 decision if your motion itself is filed in three weeks? So
22 let's --

23 MR. DUBBS: I think we can have a hearing before Your
24 Honor within a month.

25 THE COURT: Okay, so the hearing would be in early

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1 April.

2 MR. KAROTKIN: Do we get to respond, or not?

3 THE COURT: Yeah, you will in a minute. No, refile
4 (sic) to the motion or respond to the argument?

5 MR. KAROTKIN: To the motion. Yeah, the motion.

6 THE COURT: Oh, no, they get to respond.

7 MR. DUBBS: They --

8 THE COURT: So --

9 MR. DUBBS: Your Honor, they --

10 THE COURT: No, that's why I -- that's why I set the
11 hearing in April. Yeah, the way -- you gentlemen have
12 suggested that this motion would be filed in two to three
13 weeks, so that takes us out -- that takes us out to mid-March.
14 So they get to respond to that motion sometime. So that
15 strikes me as a -- and the earliest, late April. But am I
16 wrong about that, gentlemen on the phone?

17 MR. DUBBS: Well, I mean, it could be done earlier if
18 the other side cooperates. I mean, these things are set piece
19 barter (ph.), Your Honor, to be blunt.

20 THE COURT: Okay.

21 MR. DUBBS: And there aren't that many moving pieces.
22 And Weil Gotshal is one of the world's leading experts in these
23 things. So this is not a big deal in terms of time --

24 THE COURT: Okay, so let's suppose --

25 MR. DUBBS: -- investment, to happen.

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1 THE COURT: -- let's suppose the world experts do it
2 and we have a hearing in late April, and let's suppose you've
3 got the rocket judge and the judge says, "Motion granted" on
4 May 1st. Then what happens?

5 MR. DUBBS: Well, then we have -- then we have a
6 certified class and then, as day follows night, we would sit
7 down and negotiate, because that's what almost always happens.

8 THE COURT: Well, that'll happen either --

9 MR. DUBBS: Now, as a --

10 THE COURT: -- that'll happen here.

11 MR. DUBBS: We've had -- what?

12 THE COURT: That'll happen if I grant -- deny the
13 motion.

14 MR. DUBBS: Your Honor --

15 THE COURT: Right?

16 MR. DUBBS: Well, it may, but -- it may, but remember
17 what's going on, Your Honor, with all due respect, is how big
18 is the class, and how many people are going to file certain
19 pieces of paper by the bar date, and are they going to
20 understand those pieces of paper, and have they been given
21 sufficient notice.

22 And the comment was made, which is completely
23 (indiscernible) it, which is that the overwhelming majority of
24 PG&E stock was owned by institutions. It is true, there is
25 significant institutional holdings. It's also true that

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1 utilities stocks, as a practical matter, are also held by
2 elderly Americans, because they view them as safe, and they
3 have predictable dividends, et cetera, et cetera. They're the
4 opposite of a growth stock. Are those people going to
5 understand this notice? No. That's why we need a class,
6 because otherwise all those people are going to be fed up.

7 THE COURT: Well --

8 MR. DUBBS: And if they're fed up, that means there's
9 going to be no need to spread stock around --

10 THE COURT: Well, hold on. Gentlemen --

11 MR. DUBBS: -- to other people.

12 THE COURT: -- what would have happened if I had the
13 wisdom back in October, or you had told me to make them make
14 sure they're giving notice at least through known owners,
15 through brokerage houses and nominees? And just suppose the
16 notice had gone out in whatever the date it was mailed out. I
17 remember the bar date. Just suppose it had gone out to all
18 those elderly people like me, or institutional lenders, or
19 people on their boat in Tahiti, or living in Paris. They would
20 have filed claims or not filed claims, and here we'd be, just
21 like any other bankruptcy. Why is this different except for
22 timing?

23 MR. DUBBS: Well, they would have -- they would have
24 not filed a bankruptcy claim, but they would have filed
25 detailed motions as -- or detailed information as to what their

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1 losses are and valuated them -- the basis for incorporating
2 them under the plan, as opposed to what's happened now, which
3 is that everybody's ignored them and says, "Go get the
4 insurance money."

5 THE COURT: Well, I don't know anything --

6 MR. DUBBS: So we are where we are --

7 THE COURT: -- I don't know anything about the
8 insurance money.

9 MR. DUBBS: -- even if we had assumed that the
10 class --

11 THE COURT: What --

12 MR. DUBBS: -- even if you assume that the class
13 notice, rewinding the clock, had been impeccable and perfect --

14 THE COURT: Well, but look, if the --

15 MR. DUBBS: -- which it is not.

16 THE COURT: Okay, so what's wrong with the notice that
17 the debtors' counsel have proposed, whether -- again, leaving
18 aside whether it's twenty-eight days or some other number of
19 days? Do you have a quarrel with the notice of extended
20 deadline and the form of proof of claim?

21 MR. DUBBS: Well, yes, in terms of the definition of a
22 class, in terms of the process that has been well established
23 as set forth before the Court in prior proceedings, which I
24 won't go through --

25 THE COURT: But this isn't --

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1 MR. DUBBS: -- as to how this notice --

2 THE COURT: But this isn't the other proceeding.

3 MR. DUBBS: -- is given.

4 THE COURT: This is not -- as I said in my docket
5 text, this is not a notice of a class settlement. This is a
6 question of a notice of a --

7 MR. DUBBS: It's not a notice of --

8 THE COURT: -- bankruptcy claim.

9 MR. DUBBS: -- a class settlement but, if you give --
10 if the requirement is to give actual notice to people that we
11 know are out there, then there's an established way to do that.
12 That is (indiscernible) point.

13 THE COURT: And where would I --

14 MR. DUBBS: I'm not making a legal point. If --

15 THE COURT: Where do I find that? Where do --

16 MR. DUBBS: You find that by issuing an order to all
17 of the broker-dealers and giving them specific time and
18 information to do what they're supposed to do, and class
19 counsel bug them to make sure that it's being done, so that the
20 maximum -- you'll never give a hundred-percent notice, but
21 we'll give very, very high level of notice, if they do that.
22 And that's -- I mean, this is -- that's what should have been
23 done before, but it wasn't.

24 THE COURT: Well, maybe it should have been done
25 before.

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1 MR. DUBBS: And we are where we are.

2 THE COURT: And I haven't asked you, gentlemen --

3 MR. DUBBS: It should have been done.

4 THE COURT: Wait. I haven't --

5 MR. DUBBS: It should have been done.

6 THE COURT: The criticism came from --

7 MR. DUBBS: I'm sorry.

8 THE COURT: -- from Mr. Karotkin that you guys were
9 asleep and didn't make a noise. And I didn't want to go there.
10 And so the question is, if --

11 MR. DUBBS: I don't want to go there either,
12 because --

13 THE COURT: -- if --

14 MR. DUBBS: -- our view is all they had to do is walk
15 down the halls and talk to their class-action partners and make
16 this thing right.

17 THE COURT: But what if the --

18 MR. DUBBS: And they ignore this.

19 THE COURT: Wait a minute. What if the notice that
20 they have proposed now had been sent out last summer? What
21 would have been wrong with that?

22 MR. DUBBS: I think I just answered that, that it is
23 insufficient.

24 THE COURT: Well, again, can you be more specific as
25 to why it was inefficient (sic)?

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1 MR. DUBBS: It is insufficient as to the definition of
2 the class, the details of the class, the details of what is
3 being argued over. And that's as to the (indiscernible) piece
4 of paper. That is the second connected question that Your
5 Honor's talked about, which is, the method by which it gets
6 distributed, which is still not adequate.

7 THE COURT: I'm having trouble knowing what to tell
8 the debtors' counsel if I go with their proposal, not yours,
9 which I know you're not pleased with that. But if I go with
10 their procedure, I don't know what to tell them to do with what
11 is sent out to this group of people. And I --

12 MR. DUBBS: I think it's really simple. I think it's
13 really simple. These class notices are -- I won't say they're
14 forms, but they are routine documents. Any one of these
15 gentlemen has partners who do this every single day. Their
16 (ph.) view that they don't know what goes into these notices is
17 just bizarre. They can (indiscernible) that out if that's the
18 way to go.

19 Now, the (indiscernible) the problem as opposed to
20 arguing about the notices, if I may digress, is to grant the
21 motion -- grant the motion tentatively and let us go to
22 mediation and maybe this'll go away. Now, if it doesn't go
23 away, we're going to know pretty soon, and you can listen to a
24 tape recording of this hearing or read the transcript and you
25 can decide.

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1 THE COURT: Well, I want to -- I want to go back
2 again. I don't pretend to have extensive experience with class
3 actions. I probably have received more notices than I've been
4 involved in giving them. But my recollection is that normally,
5 not in a bankruptcy, the first time the person -- a civilian
6 out there in the world gets notice is notice of a prospective
7 settlement. And there's multiple steps that happens with
8 preliminary hearings and what have you. On the other hand, the
9 first notice you get in a bankruptcy is -- there is a notice of
10 a bankruptcy and there's a deadline to file a claim.

11 Now, I'm looking at the notice that the Weil Gotshal
12 lawyers for the debtors have proposed, and right on page 2 of
13 the notice, under big black letters, "Who must submit a
14 securities claim?", it says, "If you believe you have a claim
15 for purchase of equity securities between April 29, 2015 and
16 November 15th, 2018", et cetera, et cetera, et cetera. That
17 seems to be a fair warning to people. What would you have this
18 notice say beyond that? This is the -- if you --

19 MR. DUBBS: Can I back up a second?

20 THE COURT: -- suffered a --

21 MR. DUBBS: Because there's one analytical flaw in
22 your premise --

23 THE COURT: What's that?

24 MR. DUBBS: -- you gave me --

25 THE COURT: What's that?

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1 MR. DUBBS: -- which is that in a suffused (ph.) class
2 action where two times -- where notice is given, even though in
3 many cases where there's a settlement, as a practical matter,
4 it's one plan. Initially -- and if you go through the class-
5 action process and the court says the class is certified, then
6 a notice goes out. And then you have the opportunity to opt
7 out or not opt out.

8 THE COURT: I know, but that's not --

9 MR. DUBBS: Then the litigation proceed --

10 THE COURT: -- but that's not what we're talking
11 about. This is not a certification motion.

12 MR. DUBBS: I know that, Your Honor, but my point is
13 it's a relevant point, with all due respect, because the notice
14 is different for that stage of the proceeding than it is for a
15 settlement, which Your Honor's obviously familiar with, that
16 you get in consumer cases.

17 Now, in the first notice -- the first notice gives
18 them more detail than what is on the (indiscernible) now,
19 because of how -- it goes into more detail as to what the
20 allegations are, what the dates of purchase are, and so on and
21 so forth. Now, could that notice arguably be made legitimate?
22 Yes. But we have the same problem all through this, which is
23 that if you do that, you're effectively cutting out a lot of
24 people who have valid claims, because they will get this
25 notice, maybe; they may understand it maybe, even if they get

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1 it through the broker-dealers.

2 And one practical real fact is that the notice -- and
3 remember, the notice (indiscernible) action on behalf of
4 investors depends in large part on whether there's any money on
5 the table. And if there's money on the table, big, small, or
6 intermediate, people will pay attention. If it's just another
7 piece of paper in the mail, they generally don't pay attention
8 to it, which is why, if you want to do substantial justice and
9 make sure that as many people who bought stock in the debtor
10 are heard, one -- the way to go is to do it the way you have
11 suggested: let's get through this notice process, see if we
12 can settle; if not, we can have a very quick class-
13 determination issue and go from there.

14 THE COURT: You know, in the bankruptcy world --

15 MR. DUBBS: And no one could --

16 THE COURT: -- in the --

17 MR. DUBBS: No one can complain about that.

18 THE COURT: In the bankruptcy world, you get a notice
19 that says, don't file a claim, there's no money, or it says,
20 file a claim, period. It doesn't say, file a claim because
21 there's a gazillion dollars. It says, file a claim. That's
22 what I think the debtors' draft here is saying; it's saying, if
23 you were in this category of two-and-a -- three-and-a-half
24 years, you must file a claim. I'm not hearing from your side,
25 Mr. Etkin, why I shouldn't go with this -- I mean, I understand

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1 generally you don't want me to allow this at all, but I don't
2 understand what's wrong with this existing notice if I go with
3 the alternative. I think I've got -- we're --

4 MR. ETKIN: Well, Your --

5 THE COURT: -- beating this to death. I want to --

6 MR. ETKIN: Your Honor --

7 THE COURT: Go ahead, wrap up.

8 MR. ETKIN: Your Honor, if I may. If I may. And I
9 appreciate Mr. Dubbs stepping in with respect to the class-
10 action situation.

11 Your Honor, we do have Rule 7023 in the Bankruptcy
12 Code. It's there for a reason. It's not there as window
13 dressing. And Your Honor, the -- I mean, I can go through some
14 (indiscernible) and some issues with respect to the content of
15 the notice; like, for example, the statement that, well, if
16 you're a current holder of stock, you don't need to file
17 anything. Well, that's incredibly confusing. And that's what
18 the original notice said. And that's why holders, as opposed
19 to holders of claims based upon the purchase of stock -- people
20 aren't going to get that. People aren't going to understand
21 that.

22 So if you want me to spend time this afternoon going
23 through some of the ways we would change the notice, we can do
24 that. But the other question that you asked in your document
25 tree (ph.) was timing. And timing is a big deal here, despite

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1 the fact that Mr. Karotkin tries to pooh-pooh it and say, well,
2 we don't have cares about equity and 510(b) holders anyway,
3 because we'll cram them down, so they're irrelevant. Well, you
4 know, that's, at best, (indiscernible).

5 And I think that what this is all about is giving
6 folks an opportunity to be heard in this bankruptcy case and be
7 heard as a collective. And the idea that -- if we feel this is
8 perfect -- let's assume that the notice is perfect. Let's
9 assume that, according to the debtors' own consultant, there's
10 a thirty- to forty-percent success rate that he accomplished in
11 the past. And that's in our papers. And let's assume that
12 there're 111,000 -- Your Honor, there're 111,000 holders as of
13 the record date. We also indicated in our papers how many
14 class members there must be, given the turnover of the float
15 (ph.) during the class period.

16 So the number of purchasers during the class period
17 could very well be in the hundreds of thousands. So apply a
18 thirty- to forty-percent success rate, and you have, what,
19 100,000 claims that were filed? And you better have the
20 audacity to step up and say, well, administratively, that's
21 easy, we can deal with 100,000 claims and deal with resolving
22 100,000 proofs of claim. But it's much more difficult to deal
23 with a court-appointed lead plaintiff and court-appointed lead
24 counsel to try to resolve this in a way that makes sense, that
25 doesn't upset the apple cart, and that provides some recovery

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1 for the sort of investors, who, frankly, Your Honor, did --
2 there should have been a dialogue from the get-go.

3 You know, it's very interesting, Your Honor. If you
4 read the Connaught decision, which you referred to and we
5 referred to in our papers, what (indiscernible) judge there
6 said -- the same judge who decided Musicland, I might add.
7 What (indiscernible) judge said there was, you guys knew about
8 this class action from day one, you froze them out of
9 discussions, you didn't discuss anything with respect to the
10 plan and try to get it resolved, you filed your plan, ignoring
11 their claims, so you're as much to blame as anybody for the
12 situation that we're in. And I think the same applies here,
13 Your Honor.

14 The debtors chose, and had to choose, quite frankly,
15 ultimately, despite all the fighting that occurred at the
16 beginning of the case, to try to engage constituencies and come
17 up with a resolution that works. They have not done that with
18 us. They think it's better to deal with 10,000, 50,000, 80,000
19 proofs of claim. That's easier than sitting down with court-
20 appointed fiduciaries and try to get a resolution that's
21 acceptable and that can work. They think that that's easier
22 for the administration of the estate.

23 Nothing can be further from the truth, Your Honor,
24 than the idea of dealing with things that way. The Court
25 doesn't need 10,000, 20-, 50,000 additional claims

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1 (indiscernible) to really get this done. That's why 7023 is
2 part of the bankruptcy system. That's why class actions
3 generally are part of our system of jurisprudence: to get
4 things done on a collective basis.

5 THE COURT: Okay --

6 MR. ETKIN: And Mr. Karotkin spent some -- if I may,
7 Your Honor. I'm sorry. But Mr. Karotkin spent some time
8 talking about what he thinks this is really all about. Let me
9 tell you what I think this is really all about. This is all
10 about the debtor and others assuming that few people are going
11 to file a proof of claim. They won't have to deal with a lead
12 plaintiff and lead counsel who are sophisticated enough to sit
13 down and try to work out a solution. They won't have to deal
14 with them. They can pick off God knows how many potential
15 class members and end up simply dealing with a handful of
16 proofs of claim that -- they'll just steamroll them. These
17 folks won't have their own lawyer. They're not in a position
18 to obtain their own lawyer. They don't have the benefit of
19 court-appointed plan counsel and a sophisticated lead
20 plaintiff. And the debtor will go on its merry way
21 (indiscernible) of the fact that probably hundreds of thousands
22 of folks who invested in this stock during the class period
23 have lost significant money.

24 And I'm not looking to make any comparisons, Your
25 Honor. And I'll say that upfront. But we're victims too.

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1 We're victims too.

2 THE COURT: Well, I think you'd be better off not
3 dwelling on that at the moment. I understand that that might
4 be a theory, but I don't -- that's not going to play very well,
5 so I'd rather that you not dwell on that.

6 What would have happened, Mr. Etkin, if we're back in
7 time? Leaving aside what might have been a cause, what if I
8 had, on my own -- what if you had been here? What if somebody
9 had said there has to be a more robust notice, you have to
10 reach out to get to the street accounts at least, and you have
11 to give, in the original notice, a little more information
12 about the nature of the claim? And just as a hypothetical.

13 Now, the notice would have gone out, and it wouldn't
14 have said, by the way, there's going to be a payday for you.
15 It wouldn't have said, there's a class settlement and there's
16 money that -- you'd have the apathy or the proactiveness of
17 claimants. And whether that resulted in 100 proofs of claim or
18 100,000 proofs of claim, the debtors would have to deal with
19 it.

20 So why -- if they would have had to deal with it then,
21 why can't I just -- what's wrong with making them deal with it
22 now if that's the preferred way and, indeed, if it appears to
23 be less threatening to the reorganization effort for the
24 benefit of the fire victims primarily and all the other
25 creditors who are creditors of this case? Can you help me with

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1 that one?

2 MR. ETKIN: Well, Your Honor, I mean, there're several
3 assumptions in there which I can't really embrace. I can't
4 embrace that this is going to be a problem with respect to the
5 debtor moving forward and confirming its plan. There's been no
6 evidence of that whatsoever --

7 THE COURT: What do you mean?

8 MR. ETKIN: -- Your Honor. There's been --

9 THE COURT: What do you mean, "no evidence"?

10 MR. ETKIN: -- conclusory statements --

11 THE COURT: No evidence that they can confirm the
12 plan? I'm not sure --

13 MR. ETKIN: No. No evidence that having to deal at
14 some point, and likely post-confirmation, with the resolution
15 of the class proof of claim is going to preclude them from
16 confirming the plan by the June 30th deadline.

17 THE COURT: No, that -- I don't --

18 MR. ETKIN: There's been no evidence --

19 THE COURT: I don't think --

20 MR. ETKIN: -- of that whatsoever.

21 THE COURT: I don't think you understood my question,
22 so I'll try it again. Mr. Karotkin said your side should have
23 been -- made noise last year. And I'm not getting into who
24 should have or shouldn't have done something, because your side
25 has said, well, the debtor and their lawyers should have been

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1 more forthcoming and the notice should have been --

2 MR. ETKIN: I didn't cast aspersions at any --

3 THE COURT: I know.

4 MR. ETKIN: I didn't cast aspersions --

5 THE COURT: I --

6 MR. ETKIN: -- at any lawyer, Your Honor.

7 THE COURT: -- the notice should have been more
8 robust. So what I'm getting at is we can't go back in time
9 but, if we go back in time to try to replicate what could have
10 been done, what could have been done is a broader, more robust
11 notice, at least through the street accounts, and that might
12 have -- and maybe there are 100,000 defrauded investors out
13 there, but -- and maybe most of them would ignore the notice,
14 because they go, "Fire. Fire claim. Bad stock." You know,
15 that's a little attenuated.

16 So I'm trying to say you're arguing that the debtors'
17 lawyers want to cut out the plaintiffs' lawyers and they'll
18 instead deal with 100,000 proofs of claim. And my response is,
19 well, what if they had 100,000 proofs of claim from last
20 summer? What would be different? And I don't know what would
21 be different.

22 MR. ETKIN: Your Honor, that's a very difficult
23 question to answer because we are where we are. But let me try
24 to answer it for you. Okay?

25 THE COURT: Um-hum.

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1 MR. ETKIN: If notice would have been better -- and I
2 don't know how much better, and I don't know what crosses the
3 threshold. But if notice would have been better from the get-
4 go, we'd be in a different position in terms of our Rule 7023
5 argument on the merits; we'd still be making it, we'd still be
6 urging you to apply 7023, for a whole host of reasons. But
7 obviously, if that were the case, then -- and there were no
8 due-process issues upfront, it would have created a different
9 landscape. But that's not where we are.

10 And the idea that you can cover up a supplemental bar
11 date now at March 31st, given the prior testimony of Ms. Pullo
12 in her original declaration, given the testimony that was
13 provided with the declaration of Mr. Walter, given the fact
14 that the debtor has essentially done an about-face with respect
15 to that and now thinks that all of this can be accomplished and
16 done and notice can be in the hands of every class member
17 within a matter of days so that they have thirty days in order
18 to file a proof of claim, is just a fantasy. It's an absolute
19 fantasy.

20 THE COURT: Okay. I'm --

21 MR. ETKIN: I mean, I can quote you the language from
22 Ms. Pullo's --

23 THE COURT: No, no, no. I don't --

24 MR. ETKIN: -- original declaration.

25 THE COURT: I don't want to do that.

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1 MR. ETKIN: It just can't be done.

2 THE COURT: Mr. Etkin, I don't --

3 MR. ETKIN: It can't be done.

4 THE COURT: I don't want you to do that.

5 MR. ETKIN: We can go -- we --

6 THE COURT: I'm going to --

7 MR. ETKIN: The idea that this can get done and we can
8 give due process of some fundamental fairness to class members
9 by a lightning-speed attempt to get notice out and to have them
10 respond, it just -- it's an actual fantasy --

11 THE COURT: Okay --

12 MR. ETKIN: -- especially given the amount of time
13 that was given to creditors under the original bar-date orders.

14 THE COURT: Okay, Mr. Etkin, I'm going to -- I'm going
15 to stop you at that point and I'm going to give Mr. Karotkin or
16 Mr. Bennett a brief response, and then I'm going to decide what
17 to do next.

18 So Mr. Bennett, are you going to do the heavy lifting
19 here?

20 MR. ETKIN: Your Honor, there --

21 MR. BENNETT: Very briefly, Your Honor.

22 MR. ETKIN: I feel -- Your Honor, I apologize, but I
23 feel -- there was a lot said, during the initial hour that was
24 given to the debtor and others, that really rings totally
25 untrue --

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1 THE COURT: I know.

2 MR. ETKIN: -- by the --

3 THE COURT: I know, but I tried to tell you, I'm not
4 interested in anything other than to figure out what's the
5 right thing to do going forward. And you've been very helpful
6 with your comments. I don't -- it's not helpful and doesn't
7 advance the issue or the cause to go back with that. So I
8 apologize to you; I'm going to cut you off for now.

9 MR. ETKIN: No, I appreciate that, Your Honor.

10 THE COURT: I'm going to let Mr. Bennett speak, and
11 then I might not take any further comments. I'll decide.

12 Mr. Bennett?

13 MR. BENNETT: Thank you very much, Your Honor. I'm
14 going to focus a little bit on the very last part, which is
15 whether or not there's any special problem about giving a
16 notice now, and whether or not this particular audience needs a
17 lot of time, or what a reasonable amount of time is for this
18 particular audience.

19 Your Honor was specially solicitous to the fire
20 victims, for two fundamental reasons, I think; you may have had
21 more: one was, they were involuntary creditors, they didn't
22 walk in and say, "I want to be an investor in PG&E;" and the
23 second thing is that they were a lot of unsophisticated people
24 that may well have been scattered as a result of the fires, and
25 dislocated.

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1 This particular audience is a different audience.
2 This is an -- this is an investor class -- if there is really a
3 class, by the way -- which has not been established in any
4 court.

5 THE COURT: It's a group of --

6 MR. BENNETT: It's a --

7 THE COURT: -- investors; why don't we say that.

8 MR. BENNETT: It's investors, okay, investors who
9 voluntarily bought securities, who know what it's like to get
10 statements from their brokers. Your Honor knows what it's like
11 to get statements from their brokers. I don't think we have
12 to --

13 THE COURT: What, you think I have a broker?

14 MR. BENNETT: Pardon?

15 THE COURT: You think I have a broker?

16 MR. BENNETT: I -- you have a --

17 THE COURT: I work for the federal government.

18 MR. BENNETT: Okay. However -- you said you got
19 notices in the past. When you get these notices -- when people
20 have brokerage accounts that own common stock, they get things
21 in the mail; they get proxy statements with voting documents,
22 they get annual reports. They get things. They know they have
23 to open them. They know they have to read them --

24 THE COURT: Right.

25 MR. BENNETT: -- or deal with them.

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1 So this is not the same kind of class that requires a
2 six-month period. This is a class that very easily can deal
3 with a twenty-one-day or a twenty-eight-day period. To me, the
4 biggest problem is making sure there's enough time to get the
5 notices out from the debtor, in to the brokers, and out to the
6 customers. That's the big deal, and which augurs for getting
7 started soon.

8 And by the way, the class-action plaintiffs, when --
9 not if -- when they have to substantiate their claims, when
10 they have to tell us how much they would have to do the very
11 same thing, albeit it would come much, much later --

12 THE COURT: Well, but on the proof-of-claim form, the
13 investor at least is supposed to quantify what he or she claims
14 is a loss. So it could be --

15 MR. BENNETT: Exactly.

16 THE COURT: -- unknown or it could be --

17 MR. BENNETT: Well, it --

18 THE COURT: -- a trillion dollars, but --

19 MR. BENNETT: It's hard to --

20 THE COURT: -- it's something.

21 MR. BENNETT: It's hard to imagine -- you could accept
22 "unknown" in circumstances where someone lost their house and
23 their records and whatnot. You're not -- can't really accept
24 completely "unknown" in the context where a person knows what
25 they bought at and knows what they sold at.

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1 THE COURT: Right.

2 MR. BENNETT: So I actually think, in this instance,
3 when the debtor says they want a liquidated-loss amount from
4 the holder, it would be eminently reasonable to require them do
5 to it.

6 THE COURT: You mean with the supplement to the proof
7 of claim --

8 MR. BENNETT: Exactly. Yeah.

9 THE COURT: -- the CUSIP numbers, and all that other
10 stuff, and --

11 MR. BENNETT: Exactly. Totally different scheme. And
12 I think that's --

13 THE COURT: Well, but -- okay.

14 MR. BENNETT: -- fundamentally important. All right?

15 So I want to go back to the schedule, the -- Your
16 Honor tried to get a schedule; so where would we be -- when
17 would we be where. Okay? So two to three weeks for filing
18 their papers. Couple weeks for the debtors to respond and for
19 perhaps us to respond. Presumably they want to reply. We
20 forgot something: discovery about the adequacy of the class
21 representatives. I want to point out --

22 THE COURT: Well, I asked the question about
23 subclasses and so on, at least one of them.

24 MR. BENNETT: So the bottom line is -- and by the way,
25 worth noting, they keep using the words "court-appointed".

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1 They're not court-appointed for purposes of this Court, by
2 anybody.

3 THE COURT: I know.

4 MR. BENNETT: So -- okay. They're self-selected
5 representatives of investors.

6 THE COURT: But that's -- again, that's the way it's
7 done in the world of class action.

8 MR. BENNETT: I just want to make sure people
9 adequately identify themselves.

10 So what do we have to do? Okay? We have to somehow
11 get all the way through the class process, the Rule 23 process,
12 including discovery, and only then are we ready for estimation,
13 for discovery about what the amounts really are, all these
14 things which have to happen. Why do they have to happen? Why
15 can't we be here two years from now, worrying about this? Why
16 can't we defer it? Your Honor's nailed it: it's because it's
17 not just about historical equity, who you could choose or not
18 choose to put burdens on at this stage in the case. You're
19 also putting dilution risk on people who are buying new shares.
20 You're putting dilution risk on the TCC. That's the problem
21 that can't really be solved, because we can't hold up the whole
22 case to wait for all these things to happen.

23 So our best shot -- and I agree; we don't know how
24 many claims there're going to be. We could well be creating a
25 mess here. I kind of doubt it. The debtors and shareholders

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1 have talked about it, and we figured out this is the right way
2 to proceed. Let's see what's out there. The only way to see
3 what's out there is actually to give notice, actually to give
4 (ph.) back claims, and actually do a little bit of processing
5 (ph.), just like we always do.

6 Happy to answer any questions Your Honor has.

7 THE COURT: Well, I want to go back again where --
8 well, never mind.

9 Anyone else want to be heard?

10 MR. SLACK: Your Honor, Richard Slack on the phone.

11 THE COURT: Yes, sir. Yes, sir.

12 MR. SLACK: If I could -- if I could just respond to
13 two, again, discrete points --

14 THE COURT: Yes, sir.

15 MR. SLACK: -- that were made by the (indiscernible)
16 plaintiffs; the first, Your Honor, was their citing of the
17 thirty- to forty-percent success rate of returns. They do cite
18 something in their papers; it's an internet link. And what
19 (sic) the internet link they cite to is a nonbankruptcy class-
20 action settlement. And as Your Honor, I think, will correctly
21 identify, those are very different. If you're telling
22 investors, "Hey, we have a pot of money. Do you want to share
23 in it?" -- and I think Mr. Dubbs, in his comments, suggested
24 that those situations are much different in terms of returns.

25 So I don't think -- putting aside whether or not --

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1 what the right number is, it's clear that the thirty- to forty-
2 percent number is apples to oranges in our bankruptcy situation
3 today.

4 The second point, Your Honor, and I think I'd be
5 (indiscernible) if I didn't comment on this because there are a
6 number of defense lawyers for the class actions and then you
7 have Mr. Dubbs talking about this is simple; reclass
8 certification can be done simply.

9 That should not pertain to -- and this a very complex
10 class. There are numerous subclasses, and as we cite in our
11 papers, Your Honor, there are really two things that can
12 happen. We could deny class as a whole, but also very
13 importantly in class certification, we could pare it back
14 substantially. And if you pare this class back by a quarter, a
15 half, three-quarters that would change the damages
16 dramatically. And those are the kinds of things that Your
17 Honor can consider.

18 And I would say that the other claim we make in our
19 papers, and why this is a very complex matter, is the supreme
20 court recently, a couple of years ago, decided the Halliburton
21 case, which we cite. It says that you know, as a matter of
22 what would be defense due process, defendants can raise
23 causation issues and class certification; the claimants have a
24 right to do that.

25 And that usually -- and in fact, I've never seen

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1 (indiscernible) in these situations and these class security
2 cases recently that the defendants go out and get experts, the
3 plaintiff's get experts with respect to causation issues.

4 And I can tell you, Your Honor, that -- and the
5 defendants here -- I'm not representing (indiscernible) class,
6 but the defendants' counsel believes that there are very
7 significant challenges to class certification that are going to
8 require more than just, you know, a couple of days of discovery
9 and a month of briefing.

10 So I think that's the challenge we have from a due
11 process standpoint, that this court's going to face if it goes
12 through and tries to have a Rule 23 motion on top of and before
13 it could reach any of the estimation or other issues that Mr.
14 Barrent just talked about.

15 Your Honor, those are the two points I wanted to make.

16 THE COURT: Okay.

17 MR. DUBBS: Your Honor, this is Mr. Dubbs, may I
18 respond to that in one minute?

19 THE COURT: Yes, sir. One minute.

20 Well, wait. Ms. Michelson was trying to stand up,
21 your local co-counsel.

22 Did you want to be heard?

23 MS. MICHELSON: I defer to Mr. Dubbs, Your Honor.

24 THE COURT: Oh, you're doing a text with him, huh?

25 MR. DUBBS: She's smarter than I am, so let her go.

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1 THE COURT: See, in this day and age people text back
2 and forth and say, let the judge make -- get him to let me
3 talk.

4 Okay, Mr. Dubbs, you're up.

5 MS. MICHELSON: Well, I think he just deferred. I
6 have one point to make, Your Honor.

7 It seems to me that the argument boils down, in large
8 part -- on the debtors part, is they're concerned about
9 dilution. And the sophisticated investors that are going to
10 make determinations about whether or not to invest, and the
11 organized debtor need to have information.

12 Well, there's also sophisticated investors; we know
13 that they're not the mom and pops, they're not the individual
14 unfortunate victims who found themselves creditors here.
15 They're people who can look at these issues and come up with
16 their own evaluations of what the dilution might be. And that
17 is what should happen here.

18 Nothing about this process -- if it goes to a 7023
19 evaluation -- needs to be fully and finally determined by
20 confirmation. There can be estimation proceedings, as Your
21 Honor has said. There can be ranges put in disclosure
22 statements about what the dilution can be; we do this all the
23 time -- Your Honor does it all the time.

24 You know, when people come in and say I want the
25 disclosure statement to say that, well, this could happen or

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1 that could happen.

2 THE COURT: Right. You heard Mr. Karotkin say two
3 hours ago, there don't have to be disclosures.

4 MS. MICHELSON: Well, that's new, today isn't it, Your
5 Honor? I mean the Court noted that.

6 THE COURT: Well, it's not new for a portion of the
7 plan because I say -- from at home when I looked at these
8 things, I saw we've got at least a half of -- you know, some
9 impaired, some unimpaired and that seems to be the way the plan
10 is at least drafted right now.

11 And Mr. Bennett and Mr. Karotkin seem to even downplay
12 whether there needs to be a formal disclosure for the equity.
13 You know, I realize there's a different opinion about that, and
14 I can see that that's something that's an open issue for the
15 moment.

16 What you're saying if I could give it back to you is
17 sophisticated people that are going to invest in this company
18 can make decisions on whether they want to do the investing.
19 But what if they want to -- what if gets more expensive? Or
20 what if it threatens the process for some other reason? That's
21 the unknown here, isn't it?

22 MS. MICHELSON: Well, nobody wants to threaten the
23 process, but on the other hand, Your Honor, the securities
24 claimants are entitled to notice, they're entitled to make
25 their claims and they didn't get adequate notice.

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1 But if it's necessary, why can't the people in this
2 room and the people on the phone sit down and come up with
3 language to insert in a plan that says the claims of the
4 securities investors may range from X to Y? And in deciding
5 whether you would like to invest in the reorganized debtor, you
6 should take that into account. I mean, that's notice; they can
7 make their own determinations, or it can be more complete than
8 that.

9 But simply to say because these claims are not finally
10 known, this threatens the process, doesn't answer the question.
11 The question is how can we deal with these claims in a fair way
12 that gives due process to the claimants, but allows the process
13 that this court and everyone in this room is determined to have
14 concluded by the end of June happen in a fair way? And I think
15 that that can happen.

16 THE COURT: Well, do you have reason to believe it can
17 be concluded by the end of June?

18 MS. MICHELSON: What can be concluded?

19 THE COURT: Well, what -- yeah, what. That's the
20 question -- what.

21 MS. MICHELSON: The parties can draft a paragraph to
22 add into the plan arrearization and in the disclosure statement
23 that talks about this. It gives the notice that will allow
24 people to make determination --

25 THE COURT: It's hard for me to imagine the fire

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1 survivors trying to understand any of this, but then on top of
2 everything else focusing on issues that maybe will be resolved
3 maybe not, but will they get stock will they not get stock,
4 will FEMA be in there will FEMA not be in there.

5 To also focus on whether some unknown investor is
6 going to get more or less stock, to me is have little to do
7 with what the victims are going to get.

8 MS. MICHELSON: They're always going get twenty
9 percent of the stock.

10 THE COURT: Of what?

11 MS. MICHELSON: Of the reorganization.

12 THE COURT: Well, I know. That's right. Twenty
13 percent of --

14 MS. MICHELSON: That's not going to change.

15 THE COURT: That's not -- well, it's not going to
16 change unless it has to change. But you're right, it's not
17 going to change. So your point is, I mean, who's going to make
18 this informed judgment that doesn't have any bearing on their
19 outcome?

20 In other words, what -- if I'm a fire victim, why do I
21 care who divides up the eighty percent? I don't care, do I?

22 MS. MICHELSON: The fire victim, you get your
23 proportionate share of the twenty percent.

24 THE COURT: My share of the twenty percent, or not.

25 MS. MICHELSON: And the other eighty percent --

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1 THE COURT: That's right.

2 MS. MICHELSON: -- it will be determined by other
3 issues. It's not going to affect them.

4 THE COURT: Well, that's right, and you -- and if I
5 follow you correctly, is those prospective investors can make a
6 decision on how much they're getting for their money -- their
7 investment.

8 Are they going to have some claimants in the -- not
9 fire claimants but security fraud claimants -- sharing in
10 their -- in the eighty percent.

11 MS. MICHELSON: And that was always known because the
12 class action was filed -- it pre-dated the bankruptcy case.
13 One of the first things that the debtor did, in this case, was
14 try to enjoin the securities class action as against third
15 parties. This was not news to anybody --

16 THE COURT: That's right.

17 MS. MICHELSON: -- whose been following this case.

18 THE COURT: That's right.

19 MS. MICHELSON: So.

20 THE COURT: Okay.

21 MS. MICHELSON: I defer to Mr. Dubbs.

22 THE COURT: All right, I'm going to --

23 MR. DUBBS: I withdraw my request, Your Honor. Thank
24 you for your time.

25 THE COURT: Mr. Karotkin, I'll ask you the question

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1 that I asked you two hours ago. Is there any benefit in my
2 just doing nothing for a short period of time if there is going
3 to be some active attempts with Judge Newsome or otherwise?

4 Because I have to make a decision and I told you
5 that's my job, that's why I get the big bucks, right? But this
6 is not a fun decision. It's not something I want to do, and I
7 would rather not do it if I can avoid it. Is there any benefit
8 in sitting tight for a short period of time?

9 Mr. KAROTKIN: Your Honor, nothing will preclude us
10 from sitting down and meditating and negotiating anyway. I
11 think, you know, perhaps three or four days when we get a
12 little more direction from Judge Newsome, but I really don't
13 see a benefit of deferring.

14 THE COURT: Okay. All right, I want to thank everyone
15 for their time. I'll do my best to figure out what -- I will
16 figure out what I think is the best result. I don't think I'm
17 going to make everybody happy; I understand that, but I
18 appreciate the effort and under the time circumstances.

19 And the matter will stand submitted -- and submitted
20 in my mind means I'm going to issue a decision one way or the
21 other as quickly as I can. And that's what I'll promise you
22 all.

23 MR. KAROTKIN: Thank you, Your Honor.

24 THE COURT: I have a question for you, Mr. Karotkin.
25 Can you give me a clue for next week on the exit financing?

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1 Have you resolved whether that's going to involve testimony or?

2 MR. KAROTKIN: Actually, Your Honor, we did file a
3 notice that the hearing on the exit financing will not take
4 place next week.

5 THE COURT: Oh, you didn't file it in the last two
6 hour -- you must have filed it -- or maybe Ms. Kim might have
7 filed it to what I didn't look at it.

8 Okay, so that's not going forward next week.

9 MS. KIM: I think we filed it on Monday.

10 MR. KAROTKIN: I think we filed it Monday or Tuesday.

11 THE COURT: I thought it was over to next week? No?

12 MR. KAROTKIN: We filed another notice on Monday. I
13 apologize, but we filed another notice.

14 THE COURT: It's okay. I just can't keep up with all
15 the notices.

16 MR. KAROTKIN: So it's not going forward next week.

17 MS. KIM: The FEMA and the government claims
18 objections are going forward next week.

19 THE COURT: Well, have you -- someone reported back,
20 Mr. Karotkin? Did we get that back, so? Because I had asked
21 for a status report on whether that was going forward.

22 MR. KAROTKIN: I believe Mr. Julian replied to that.

23 THE COURT: Yeah. But I haven't checked in with my
24 court --

25 MR. KAROTKIN: I think, Ms. -- yeah, I believe she has

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1 that.

2 THE COURT: -- room deputy yet. So that's still on
3 for next Wednesday.

4 MR. KAROTKIN: Correct. Yes. But not the financing.

5 THE COURT: Okay. Thank you very much, everybody.

6 MR. KAROTKIN: Thank you, sir.

7 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

8 (Whereupon these proceedings were concluded at 3:30 PM)

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C E R T I F I C A T I O N

I, Emily Howard, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ EMILY HOWARD

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Phoenix, AZ 85020

Date: February 21, 2020

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